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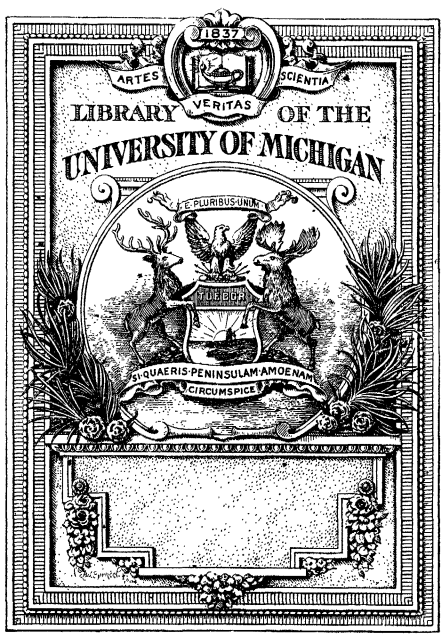

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TRANSLATION

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OF

THE CIVIL CODE

IN FORCE IN

CUBA, PORTO RICO, AND THE PHILIPPINES.

DIVISION OF CUSTOMS AND INSULAR AFFAIRS.
WAR DEPARTMENT.
October, 1899.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1899.

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ROYAL DECREE.

At the suggestion of the colonial secretary, in accordance with the council of secretaries, etc.,

I hereby decree the following:

ARTICLE 1. The Civil Code now in force in the Peninsula, drafted in accordance with the provisions of the law of May 11, 1888, and approved by royal decree of the 24th instant, is hereby extended to the islands of Cuba, Porto Rico, and the Philippines.

ART. 2. This Code shall go into effect in the said islands twenty days after its publication in the official newspapers of the same.

ART. 3. In accordance with the provisions of article 1 of the said Code, the laws shall go into effect in the colonial provinces twenty days after their promulgation, it being understood that this shall be the day on which their publication in the official newspapers of the islands shall end.

Given at San Ildefonso, July 31, 1889.

MARÍA CRISTINA.

MANUEL BECERRA,
Colonial Secretary.

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CIVIL CODE.

PRELIMINARY TITLE.

LAWS, THEIR EFFECT, AND GENERAL RULES FOR THEIR APPLICATION.

ARTICLE 1. Laws shall be binding in the Peninsula, in the adjacent islands, in the Canaries, and in the territory of Africa, which is subject to Peninsular legislation, twenty days after their promulgation, if not otherwise provided therein.

The promulgation shall be understood as having taken place the day of the termination of the publication of the law in the *Gaceta*.

ART. 2. Ignorance of the law does not excuse from compliance therewith.

ART. 3. Laws shall not have a retroactive effect unless otherwise prescribed therein.

ART. 4. Acts executed against the provisions of law are void, excepting the cases in which said law orders their validity.

Rights granted by the laws may be renounced, provided this renunciation is not contrary to public interest or public order, or to the prejudice of a third person.

ART. 5. Laws are repealed only by other subsequent laws, and disuse or any custom or practice to the contrary shall not prevail against their observance.

ART. 6. Any tribunal which refuses to render judgment on the pretext of silence, obscurity, or insufficiency of the laws shall incur liability therefor.

When there is no law exactly applicable to the point in controversy, the customs of the place shall be observed, and, in the absence thereof, the general principles of law.

ART. 7. If in the laws months, days, or nights are referred to, it shall be understood that the months are of thirty days, the days of twenty-four hours, and the nights from the setting to the rising of the sun.

If the months are indicated by their names, they shall be computed by their actual number of days.

ART. 8. Penal laws, police laws, and those of public security are binding on all those who reside in Spanish territory.

ART. 9. The laws relating to family rights and obligations, or to the status, condition, and legal capacity of persons, obligate Spaniards even though they reside in a foreign country.

ART. 10. Personal property is subject to the laws of the nation of the

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owner thereof; real property to the laws of the country in which it is situated.

However, legal and testamentary successions, with regard to the order of succession, as well as to the amount of the successional rights and to the intrinsic validity of their provisions, shall be regulated by the laws of the nation of the person whose succession is in question, whatever may be the nature of the property and the country where it may be situate.

Biscayans, even though they reside in towns, shall continue subject, with regard to the property they possess in the level lands, to law 15, title 20, of the *Fuero de Vizcaya*.

ART. 11. The forms and solemnities of contracts, wills, and other public instruments are governed by the laws of the country in which they are executed.

When said instruments are authenticated by diplomatic or consular officials of Spain abroad, the formalities required by Spanish laws for their execution shall be observed.

Notwithstanding the provisions of this and of the preceding article, prohibitive laws concerning persons, their acts or property, and those which relate to the public order and to good morals, shall not remain without effect by virtue of laws issued or judgments rendered, or by regulations made or conventions agreed upon in a foreign country.

ART. 12. The provisions of this title, in so far as they determine the effects of the laws, statutes, and general rules for their application, are binding in all the provinces of the Kingdom, as well as the provisions contained in title 4, book 1.

In all other matters the provinces and territories in which the law of the forum is in force shall preserve it for the present, no change being made in their actual judicial administration, whether written or customary, by the publication of this code, which shall be enforced only as a supplementary law in the absence of that which is such by their special laws.

ART. 13. Notwithstanding the provisions of the foregoing article, this code shall go into effect in Aragón and in the Balearic Islands at the same time as in the provinces not under the law of the forum, in so far as not conflicting with those provisions of the forum or customary ones which are actually in force.

ART. 14. In accordance with the provisions of article 12, those of articles 9, 10, and 11, with regard to persons, acts, and property of Spaniards abroad and that of foreigners in Spain, are applicable to persons, acts, and property of Spaniards in territories or provinces having different civil legislation.

ART. 15. Family rights and duties, those relating to the status, condition, and legal capacity of persons, and those of testamentary or intestate succession declared in this code, are applicable:

1. To persons born in the common-law provinces or territories of parents subject to the law of the forum, if the latter, during the minority

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of the children, or the said children, within the year following their majority or emancipation, declare it is their desire to submit themselves to the civil code.

2. To the children of a father, and, should the latter not exist or be unknown, of a mother belonging to provinces or territories subject to the common law, even when born in provinces or territories where the law of the forum is in force.

3. To those who, proceeding from provinces or territories subject to the law of the forum, should have acquired a residence in other ones, subject to the common law.

For the purposes of this article, residence is acquired by a residence of ten years in provinces or territories subject to the common law, unless the interested party, before the termination of this period, expresses his wishes to the contrary, or by a residence of two years, provided that the interested party states that this is his wish. Either declaration should be made before the municipal judge for the proper record in the civil registry.

In any case, the wife shall follow the condition of the husband; and the children, not emancipated, that of their father, and in his absence that of their mother.

The provisions of this article are of reciprocal application to the Spanish provinces and territories having different civil legislation.

ART. 16. In matters which are governed by special laws, the deficiency of the latter shall be supplied by the provisions of this Code.

BOOK FIRST.

PERSONS.

TITLE I.

Spaniards and Foreigners.

ART. 17. The following are Spaniards:

1. Persons born in Spanish territory.

2. Children of a Spanish father or mother, even though they were born out of Spain.

3. Foreigners who may have obtained naturalization papers.

4. Those who, without said papers, may have acquired a residence in any town in the Monarchy.

ART. 18. Children, while they remain under the parental authority, have the nationality of their parents.

In order that those born of foreign parents in Spanish territory may enjoy the benefits granted them by No. 1 of article 17, it shall be an indispensable requisite that the parents declare, in the manner and before the officials specified in article 19, that they choose in the name of their children the Spanish nationality, renouncing all others.

ART. 19. The children of a foreigner born in Spanish possessions must state, within the year following their majority or emancipation, whether they desire to enjoy the citizenship of Spaniards, granted them by article 17.

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Those who are in the Kingdom shall make this declaration before the official in charge of the civil registry of the town in which they reside; those who reside abroad before one of the consular or diplomatic agents of the Spanish Government, and those who are in a country in which the Government has no agent addressing the secretary of state of Spain.

ART. 20. The citizenship of a Spaniard is lost by acquiring the nationality of a foreign country, or by accepting employment from another Government, or by entering the armed service of a foreign power without the permission of the King.

ART. 21. A Spaniard who loses his citizenship by acquiring the nationality of a foreign country can recover it upon returning to the Kingdom by declaring to the official in charge of the civil registry of the domicile which he elects that such is his wish, in order that the proper entry may be made, and by renouncing the protection of the flag of said country.

ART. 22. A married woman follows the condition and nationality of her husband.

A Spanish woman who marries a foreigner may, upon the dissolution of the marriage, recover the Spanish nationality by complying with the requisites mentioned in the preceding article.

ART. 23. Any Spaniard who loses his citizenship by accepting employment from any other government, or by entering the armed service of a foreign power without the King's permission, can not recover the Spanish nationality without previously obtaining the royal authorization.

ART. 24. A person born abroad, of a Spanish father or mother, who may have lost the Spanish nationality on account of the parents having lost it, may also recover it by complying with the conditions required by article 19.

ART. 25. In order that foreigners who have obtained naturalization papers or acquired a residence in any town in the Monarchy may enjoy Spanish nationalty, they must previously renounce their former nationality, swear to the constitution of the Monarchy, and record themselves as Spaniards in the civil registry.

ART. 26. Spaniards who change their domicile to a foreign country, where they may be considered as natives without other conditions than that of residence therein, shall be required, in order to preserve the Spanish nationality, to state that such is their wish before the Spanish diplomatic or consular agent, who must record them in the registry of Spanish residents, as well as their spouses, should they be married, and any children they may have.

ART. 27. Foreigners enjoy in Spain the rights which the civil laws grant to Spaniards, with the exception of the provisions of article 2 of the constitution of the State or in international treaties.

ART. 28. Corporations, institutions, and associations recognized by law and domiciled in Spain shall enjoy the Spanish nationality pro-

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vided they possess the character of judicial persons in accordance with the provisions of this code.

Associations domiciled abroad shall have in Spain the consideration and the rights fixed in treaties or special laws.

TITLE II.

Birth and extinction of civil personality.

CHAPTER FIRST.

Natural persons.

ART. 29. Birth determines personality, but the conceived child is considered as born for all favorable purposes, provided that it be born with the conditions mentioned in the following article.

ART. 30. For civil purposes the fœtus shall only be considered as born which has a human form and lives twenty-four hours entirely separated from the mother's womb.

ART. 31. Priority of birth, in case of twins, gives to the firstborn the rights which the law recognizes in primogeniture.

ART. 32. Civil personality is extinguished by the death of persons.

Minority, insanity, or idiocy, the state of being deaf and dumb, prodigality, and civil interdiction are only restrictions upon the judicial personality. Those who are in any of these conditions may have rights and even obligations when they arise from the facts or from the relations between the property of the incapacitated person and a third person.

ART. 33. Should there be doubt between two or more persons called to succeed each other as to which of them died first, he who alleges the prior death of one or the other must prove it; in the absence of proof it shall be presumed that they both died at the same time, and the transmission of rights from one to the other shall not take place.

ART. 34. With regard to the presumption of the death of an absentee and its effects the provisions of title 8 of this book shall govern.

CHAPTER II.

Judicial persons.

ART. 35. The following are judicial persons:

1. The corporations, associations, and institutions of public interest recognized by law.

Their personality begins from the very instant in which, in accordance with law, they are validly established.

2. The associations of private interest, be they civil, commercial, or industrial, to which the law grants proper personality, independent of that of each member thereof.

ART. 36. The associations referred to in No. 2 of the foregoing article, shall be governed by the provisions of their articles of association, according to the nature of the latter.

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ART. 37. The civil capacity of corporations shall be governed by the laws which have created or recognized them; that of associations by their by-laws, and that of institutions by the rules of their establishment, duly approved by an administrative act, when this requisite is necessary.

ART. 38. Judicial persons may acquire and possess property of all kinds, as well as contract obligations and institute civil or criminal actions in accordance with the laws and rules of their establishment.

The church shall be governed, in this particular, by what has been agreed upon by both powers, and educational and charitable institutions by the provisions of special laws.

ART. 39. When corporations, associations, and institutions have ceased to act, by reason of the termination of the period during which they legally acted, or on account of having attained the ends for which they were established, or because it has become impossible to apply thereto the activity and the means which were at their disposal, the property shall be disposed of as may have been determined upon by the laws or by-laws or articles of their establishment. If nothing has been previously fixed, the property shall be used for similar purposes in the interests of the region, province, or municipality which may have principally reaped the benefits of the extinct institutions.

TITLE III.

Domicile.

ART. 40. For the exercise of rights and the fulfillment of civil obligations the domicile of natural persons is the place of their usual residence; and, in a proper case, that determined by the law of civil procedure.

The domicile of resident diplomats who, by reason of their office abroad, enjoy the rights of extraterritoriality shall be the last one they had in Spanish territory.

ART. 41. When neither the law which has created or recognized them, nor the statutes or rules of their establishment fix the domicile of judicial persons, it shall be understood that it is at the place where their legal representation is established or where they exercise the principal duties of their institution.

TITLE IV.

Marriage.

CHAPTER FIRST.

General provisions.

SECTION FIRST.—*Forms of marriage.*

ART. 42. The law recognizes two forms of marriage—the canonical, which all who profess the Catholic religion must celebrate, and the civil, which shall be celebrated in the manner prescribed in this code.

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SECTION SECOND.—*Provisions common to both forms of marriage.*

ART. 43. Future espousals do not give rise to an obligation to contract marriage. No tribunal shall admit a complaint in which their fulfillment is demanded.

ART. 44. If the promise has been made in a public or private instrument by a person of age, or by a minor in the presence of the person whose consent is necessary for the celebration of the marriage, or when the banns have been published, the person who refuses to marry, without just cause, shall be obliged to indemnify the other party for the expenses which he or she may have incurred by reason of the promised marriage.

An action to recover indemnity for the expenses to which the foregoing article refers may be instituted only within a year, counted from the day of the refusal to celebrate the marriage.

ART. 45. Marriage is forbidden—

1. To a minor who has not obtained permission and to a person of age who has not requested the advice of the persons whose right it is to authorize one or the other in the cases provided for by law.

2. To a widow during the three hundred and one days following the death of her husband, or before childbirth if she should have been left pregnant, and to the woman whose marriage has been declared void in the same condition and for the same periods, to be counted from the date of her legal separation.

3. To the guardian and his descendants with the persons whom he may have or may have had under charge, until the guardianship has terminated and the accounts of his administration have been approved, except in case the father of the person subject to guardianship has authorized the marriage in a will or in a public instrument.

ART. 45. (Cuba and Porto Rico.) The following are forbidden to marry in the islands:

Males under 20 years of age and females under 17, natives of the Spanish Antilles, who have not obtained the proper permission, and those over said ages who have not requested the advice of the persons whose legal right it is to authorize one or the other.

(There is no change in Nos. 2 and 3.)

ART. 46. The permission referred to in No. 1 of the preceding article must be granted the legitimate children by the father; in his absence or where he is prevented from giving it the power to grant it devolves upon the mother, the paternal and maternal grandparents, and, in the absence of all of them, upon the family council, in the order fixed here.

If acknowledged natural children or children legitimized by royal concession are in question, such consent must be asked of those who acknowledged or legitimized them, of their ascendants, and of the family council, in the order established in the preceding paragraph.

If adopted children are in question, the consent shall be asked of the adopting father, and in his absence of the proper members of the natural family.

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Other illegitimate children shall obtain the consent of their mother, when she is legally acknowledged, that of the maternal grandparents in the same case, and, in the absence of either, that of the family council.

It is the duty of the heads of foundling institutions to give consent for marriage to those educated therein.

ART. 47. Children of age are obliged to ask the advice of their father, and in his absence that of the mother. If they should not obtain it, or it should be unfavorable, the marriage can not be celebrated until three months after the petition is made.

ART. 47. (Cuba and Porto Rico.) Children over the ages referred to in number 1 of article 45 are obliged to request the advice of the father, and in his absence of the mother. Should they not obtain it, or should it be unfavorable, the marriage can not take place until three months after the petition was made.

ART. 48. The consent and the favorable advice for the celebration of a marriage must be proven, if requested, by means of an instrument authenticated by a civil or ecclesiastical notary or by the municipal judge of the domicile of the petitioner.

When the advice has been asked in vain the lapse of time to which the preceding article refers shall be proven in the same manner.

ART. 49. None of those called upon to give their consent or advice is obliged to state the reasons for granting or refusing it, nor is there any remedy against their dissent.

ART. 50. If, notwithstanding the provisions of article 45, the persons mentioned therein are married, their marriage shall be valid; but the contracting parties, without prejudice to the provisions of the penal code, shall be subject to the following rules:

1. The marriage shall be understood as contracted with the absolute separation of property, and each spouse shall retain the ownership and administration of that which belongs to him or her, the income therefrom being his or hers, although with the obligation of proportionally defraying the marriage expenses.

2. Neither of the spouses shall receive from the other anything by gift or by will.

The provisions of the two preceding rules shall not be applicable to the cases of number 2 of article 45, if dispensation has been obtained.

3. If one of the spouses is a minor, not emancipated, he or she shall not administer his or her property until attaining majority. In the meantime he or she shall only be entitled to support, which shall not exceed the net income from his or her property.

4. In the cases of number 3 of article 45 the guardian shall, besides, lose the administration of the property of the ward during her minority.

ART. 51. Civil or canonical marriage shall produce no civil effects when either of the spouses is already legally married.

ART. 52. Marriage is dissolved by the death of one of the spouses.

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SECTION THIRD.—*Proof of marriage.*

ART. 53. Marriages celebrated before this code went into effect shall be proved by the means established by prior laws.

Those contracted subsequently shall be proved only by a certificate of the record in the civil registry, unless the books thereof never existed or have disappeared, or a question is pending before the tribunals, in which cases all kinds of evidence is admissible.

ART. 54. In the cases referred to in the second paragraph of the foregoing article, the uninterrupted status of the parents, together with the certificates of the birth of their children as legitimate, shall be one method of proof of the marriage of the former, unless it is shown that one of the two was bound by another prior marriage.

ART. 55. A marriage contracted in a foreign country, where such acts do not require a regular or authentic registration, may be proven by any of the methods of proof admitted by law.

SECTION FOURTH.—*Rights and obligations of husband and wife.*

ART. 56. The spouses are obliged to live together, to be faithful to and mutually assist each other.

ART. 57. The husband must protect the wife and the latter obey the husband.

ART. 58. The wife is obliged to follow her husband wherever he may establish his residence. The tribunals, nevertheless, may, with just cause, exempt her from this obligation when the husband removes his residence beyond the seas or to a foreign country.

ART. 59. The husband is the administrator of the property of the conjugal partnership, except when the contrary is stipulated and in the case of article 1384.

If he is under 18 years of age, he can not administer without the consent of his father; in the absence of the latter, that of the mother, and in the absence of both without that of his guardian. Neither may he appear in a suit without the appearance of said persons.

In no case, until he has attained majority, may the husband, without the consent of the persons mentioned in the preceding paragraph, borrow money, encumber or alienate the real property.

ART. 60. The husband is the representative of his wife. The latter can not, without his permission, appear in a suit in person nor through a solicitor.

Nevertheless, she does not require such permission to defend herself in a criminal suit, or to proceed against or to defend herself in suits with her husband, or when she may have obtained the rights in accordance with the provisions of the law of civil procedure.

ART. 61. Neither may the wife, without the permission or power of her husband acquire property for a good or valuable consideration, alienate her property or bind herself, except in the cases and with the limitations established by law.

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ART. 62. Acts executed by the wife contrary to the provisions of the preceding articles are void, except when they involve things which by their nature are to be applied to the ordinary use of the family, in which case purchases made by the wife shall be valid. Purchases of jewels, furniture, and precious objects made without the permission of the husband shall only be valid when the latter may have consented to his wife using and enjoying such things.

ART. 63. The wife, without permission of her husband, may—

1. Execute a will.

2. Exercise the rights and fulfill the duties which appertain to her with regard to the legitimate and acknowledged natural children she may have had by another, and with relation to the property of the same.

ART. 64. The wife shall share the honors of her husband, except those which are strictly and exclusively personal, and shall retain them as long as she does not contract a new marriage.

ART. 65. Only the husband and his heirs may enforce the nullity of the acts executed by his wife without proper permission or authorization.

ART. 66. The provisions of this section are understood to be without prejudice to those of this code relating to absence, incapacity, prodigality, and interdiction of the husband.

SECTION FIFTH.—*Effects of annullment of marriage and of divorce.*

ART. 67. The civil effects of suits and decrees concerning annullment of marriage and divorce can only be obtained before the ordinary tribunals.

ART. 68. After the suits referred to in the preceding article have been instituted and admitted, the following measures shall be adopted during the pendency thereof:

1. The separation of the spouses in every case.

2. The protection of the wife in the cases and in the manner prescribed by the law of civil procedure.

3. The placing of the children under the care of one or both of the spouses as may be proper.

4. The provision for the support of the wife and of the children who do not remain under the authority of the father.

5. The adoption of the necessary measures to prevent the husband, who may have given cause for the divorce, or against whom the suit for annulment of the marriage has been instituted, from injuring the wife in the administration of her property.

ART. 69. A marriage contracted in good faith produces civil effects, although it may be declared void.

If good faith existed on the part of only one of the spouses it shall produce civil effects only with regard to said spouse and to the children.

Good faith is presumed if the contrary does not appear.

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When bad faith existed on the part of both spouses, the marriage shall only produce civil effects with relation to the children.

ART. 70. After the annulment of a marriage has been finally decreed, the sons over three years of age shall remain under the care of the father, and the daughters under the care of the mother, if there should have been good faith on the part of both spouses.

If good faith existed on the part of one of the spouses only, the children of both sexes shall remain under the authority and care of said spouse.

If both were guilty of bad faith, the tribunal shall decide as to the disposition of the children in the manner prescribed in the second paragraph of No. 2 of article 73.

The sons and daughters, under three years of age, shall in all cases remain under the charge of the mother, until they attain this age, unless on account of special reasons the decree has ordered otherwise.

ART. 71. The provisions of the first and second paragraphs of the preceding article shall not be made use of if the parents, by common consent, shall provide otherwise for the care of the children.

ART. 72. The final decree of annulment shall produce, with regard to the property of the marriage, the same effects as a dissolution by death; but the spouse who has acted in bad faith shall have no rights to the profits of the conjugal partnership.

When both have acted in bad faith, one shall be set off by the other.

ART. 73. A decree of divorce shall produce the following effects:

1. The separation of the spouses.

2. The children to remain or be placed under the authority and protection of the innocent spouse.

When both are guilty, a guardian shall be provided for the children in accordance with the provisions of this code, and if the decree has not provided otherwise, the mother in every case shall have the children under three years of age in her charge.

Upon the death of the innocent spouse, the guilty one shall recover the parental authority and his or her rights, when the cause which gave rise to the divorce should have been adultery, violence to the person, or grave insult. When the cause is different, a guardian shall be appointed for the children. The deprivation of the parental authority and of its rights does not exempt the guilty spouse from the fulfillment of the obligations which this code imposes upon him or her with regard to the children.

3. The guilty spouse shall lose all that may have been given or promised him or her by the innocent one or by any other person in consideration for the latter; and the innocent spouse shall keep all that he or she has received from the guilty one, being permitted, besides, to claim forthwith all that may have been promised by the same.

4. The separation of the property of the conjugal partnership, and the loss of the administration of that of the wife, if the husband should have it, and is the one who gave cause for the divorce.

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5. The retention by the innocent husband of the administration, if he should have it, of the property of the wife, who shall only be entitled to support.

ART. 74. Reconciliation terminates the suit for divorce and leaves the decree issued in regard thereto without subsequent effects; but the spouses must give notice thereof to the tribunal which has or may have taken cognizance of the suit.

The effects of the decree shall be enforced with regard to the children, without prejudice to the provisions of the foregoing article, when it is founded on the attempt or connivance of the husband or of the wife to corrupt their sons or to prostitute their daughters, in which case, if either still continue under the parental authority, the tribunals shall adopt the proper measures in order to protect them from corruption or prostitution.

CHAPTER SECOND.—*Canonical marriage.*

ART. 75. The requisites, form, and solemnities for the celebration of canonical marriages shall be governed by the provisions of the Catholic Church and of the Holy Council of Trent, accepted as laws of the Kingdom.

ART. 76. Canonical marriage shall produce all the civil effects with regard to the persons and property of the spouses and their descendants.

ART. 77. A municipal judge or other official of the State shall be present at the celebration of the canonical marriage for the sole purpose of making the immediate record thereof in the civil registry. For this purpose the contracting parties are obliged to give notice in writing to the proper municipal court twenty-four hours at least in advance, of the day, hour, and place where the marriage is to be celebrated, incurring, should they not do so, a fine of from 5 to 80 pesetas. The municipal judge shall give a receipt for the notice from the contracting parties. Should he refuse to give it, he shall incur a fine, which shall not be less than 20 nor exceed 100 pesetas.

The celebration of the canonical marriage shall not be proceeded with without the presentation of said receipt to the parochial priest.

If the marriage is celebrated without the presence of the municipal judge or his delegate, notwithstanding that the contracting parties may have advised him thereof, the record of the certificate of the canonical marriage in the civil registry shall be made at his expense, and he shall pay, besides, a fine which shall not be less than 20 nor exceed 100 pesetas. In such case, the marriage shall produce all its civil effects from the moment of its celebration.

If the contracting parties should be at fault for not having given notice to the municipal judge, they may remedy the defect by asking for the record of the marriage in the civil registry. In this case, the marriage shall produce no civil effects, except from the time of its record.

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ART. 78. Those who contract canonical marriage *in articulo mortis* may give notice to the person in charge of the civil registry, at any time before its celebration, and prove, in any manner whatsoever, that they have fulfilled this duty.

The penalties imposed upon contracting parties who omit this requisite shall not be applicable to the case of marriage *in articulo mortis*, when it is shown that it was impossible to give proper notice. In every case, in order that the marriage may produce civil effects from the date of its celebration, the sacramental certificate shall be entered in the registry within the following ten days.

ART. 79. The secret marriage of conscience, celebrated before the church, is not subject to any formality in the civil order, nor shall it produce any civil effects, except from the time of its publication through its entry in the registry.

This marriage shall nevertheless produce civil effects from the time of its celebration if both contracting parties, by common consent, ask the bishop who authorized it, for a copy of the entry made in the secret register of the bishopric, and if they send it directly, with the proper secrecy, to the general direction of the civil registry, requesting its entry. For this purpose the general direction shall keep a special and secret registry with the necessary precautions, in order that the contents of said records may not be made known until the interested parties request that they be made public by transferring the same to the municipal registry of their domicile.

ART. 80. The cognizance of suits for annulment and divorce, in case of canonical marriages, appertains to the ecclesiastical tribunals.

ART. 81. When a suit for divorce or annulment of marriage has been instituted before the ecclesiastical tribunal, it is the duty of the civil tribunal to order, at the instance of the party interested, the provisions referred to in article 68.

ART. 82. A final decree of annulment or divorce of a canonical marriage shall be entered in the civil registry, and shall be presented to the ordinary tribunal for the purpose of requesting its enforcement in the part relating to the civil effects.

CHAPTER THIRD.

Civil marriage.

SECTION FIRST.—*Capacity of the contracting parties.*

ART. 83. The following can not contract marriage:

1. Males under the age of fourteen and females under the age of twelve.

Marriage contracted by persons who have not arrived at the age of puberty, shall, nevertheless, be, *ipso facto* validated, without the necessity of an express declaration, if one day after having attained legal

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puberty they should have lived together without having given rise to a suit against its validity, or if the woman should have conceived before legal puberty or before the institution of said suit.

2. Those who were not in the full enjoyment of their reason at the time of contracting marriage.

3. Those who suffered from absolute or relative physical impotency for the purposes of procreation, prior to the celebration of the marriage, in a patent, perpetual, and incurable manner.

4. Those ordained *in sacris* and those professed in an approved religious canonical order, bound by a solemn pledge of chastity, unless either have obtained the proper canonical dispensation.

5. Those who are already bound in marriage.

ART. 84. Neither can the following contract marriage with each other:

1. The ascendants and descendants by legitimate or natural consanguinity or affinity.

2. Collaterals by legitimate consanguinity up to the fourth degree.

3. Collaterals by legitimate affinity up to the fourth degree.

4. Collaterals by natural consanguinity or affinity up to the second degree.

5. The adopting father or mother and the adopted; the latter and the surviving spouse of the former, and the former and the surviving spouse of the latter.

6. The legitimate descendants of the adopter with the adopted, while the adoption lasts.

7. Adulterers who have been condemned by a final judgment.

8. Those who have been condemned as authors, or as the author and accomplice, of the death of the spouse of either of them.

ART. 85. The government, with sufficient cause, may, at the instance of a party, waive the impediment mentioned in No. 2 of article 45; the third and fourth degrees of collaterals by legitimate consanguinity; the impediments arising from legitimate or natural affinity between collaterals, and those relating to the descendants of the adopter.

SECTION SECOND.—*Celebration of marriage.*

ART. 86. Those who, in accordance with article 42, desire to contract marriage in the manner determined in this code, shall present to the municipal judge of their domicile a declaration signed by both contracting parties, in which there shall be stated:

1. The names, surnames, age, profession, domicile or residence of the contracting parties.

2. The names, surnames, profession, domicile or residence of the parents.

Certificates of birth and of the status of the contracting parties, the consent or advice, if proper, and the dispensation, when it is necessary, shall accompany this declaration.

ART. 87. Marriages shall be celebrated in person, or by a proxy to whom a special power has been given; but the presence of the contract-

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ing party who is domiciled or resides in the district of the judge who is to authorize the marriage shall always be required.

The name of the person with whom the marriage is to be celebrated shall be mentioned in the special power, and the marriage shall be valid if, before its celebration, the person so authorized should not have been notified in an authentic manner of the revocation of the power.

ART. 88. If the municipal judge selected for the celebration of the marriage should not be at the same time that of the domicile of both contracting parties, two declarations shall be presented, one to the municipal judge of each contracting party, stating which of the two judges they have selected for the celebration of the marriage, and in both courts the proceedings established in the following articles shall be pursued.

ART. 89. The municipal judge, after ratification of the contracting parties, shall order that edicts or proclamations be posted for fifteen days announcing the desire, with all the conditions mentioned in article 86, and calling upon those who have information of any obstacle to denounce it. Similar edicts shall be sent to the municipal judges of the towns in which the interested parties may have resided or been domiciled during the two previous years, requesting that they be posted in the place of the holding of their public court for the period of fifteen days, and that, after the lapse of this time, they return them with a certification of said requisite having been fulfilled and whether or not any obstacle has been denounced.

ART. 90. Soldiers in active service who intend to contract marriage shall be excused from the publication of such edicts outside of the place where they reside if they present a certificate that they are unmarried, issued by the commanding officer of the military body to which they belong.

ART. 91. If the interested parties are foreigners, and have not resided two years in Spain, they shall prove, by a certificate in due form, issued by a competent authority, that in the territory where they have had their domicile or residence during the two previous years the publication has been made of the marriage which they intend to contract, with all the formalities which are required in the former place.

ART. 92. In all other cases only the Government may waive the publication of the edicts on account of serious causes sufficiently proved.

ART. 93. Notwithstanding the provisions of the preceding articles, the municipal judge shall authorize the marriage of a person who is in imminent danger of death, whether he or she is domiciled in the place or is a transient.

This marriage shall be considered conditional until the previous freedom of the contracting parties is legally established.

ART. 94. Paymasters of men-of-war and captains of merchantmen shall authorize marriages which are celebrated on board in imminent danger of death. These marriages shall also be considered conditional.

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ART. 95. The provisions of the preceding article are applicable to the commanders of military bodies in the field in the absence of a municipal judge with regard to the members of the same who desire to celebrate marriage *in articulo mortis.*

ART. 96. After the fifteen days referred to in article 89 have elapsed, without any obstacle having been denounced, the municipal judge having no knowledge of any, he shall proceed with the celebration of the marriage in the manner prescribed in this code.

If a year elapses from the publication of the edicts without the marriage taking place, it shall not be celebrated without a new publication.

ART. 97. If, before the celebration of the marriage, any person should appear opposing it and alleging a legal obstacle, or the municipal judge should have knowledge of any, the celebration of the marriage shall be suspended until the truth or falsity of the obstacle is declared in a final judgment.

ART. 98. All those who have knowledge of an intention to marry are obliged to denounce any obstacle known to them. The denunciation having been made, it shall be forwarded to the department of public prosecution, which, if it finds any legal foundation therefor, shall oppose the marriage. Only private parties who have an interest in preventing the marriage may personally institute the opposition, and in either case such opposition shall be carried out in accordance with the law of civil procedure, giving it the form of an interlocutory issue.

ART. 99. When, by a final judgment, the alleged obstacles are declared false, he who, taking them as a basis, instituted in his name the opposition to the marriage, shall be bound to make indemnity for damages and injuries.

ART. 100. The marriage shall be celebrated by the contracting parties appearing before the municipal judge, or one of them and the person to whom the absentee may have granted a special power to represent him or her, accompanied by two witnesses of age and without legal impediments.

Immediately thereafter the municipal judge, after reading articles 56 and 57 of this code, shall ask each one of the contracting parties if they persist in their decision to celebrate the marriage, and if he shall actually perform it; and if both reply affirmatively he shall draft the certificate of marriage with all the circumstances necessary to show that the requirements prescribed in this section have been complied with. The certificate shall be signed by the judge, by the contracting parties, by the witnesses, and by the clerk of the court.

Consuls and vice-consuls shall exercise the duties of municipal judges in marriages of Spaniards celebrated abroad.

SECTION THIRD.—*Annullment of marriage.*

ART. 101. The following marriages are void:

1. Those celebrated between the persons referred to in articles 83 and 84, except in cases of dispensation.

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2. Those contracted by error as to the person, or by compulsion or intimidation, which avoids the consent.

3. Those contracted by the abductor with the abducted while she is in his power.

4. Those which are not celebrated by a competent municipal judge, or by the person who should act in his place, and without the presence of the witnessess required by article 100.

ART. 102. An action for the purpose of procuring the nullity of the marriage must be instituted by the spouses, by the department of public prosecution, or by any person whatsoever who may have any interest therein.

Cases of abduction, error, force, or intimidation are excepted, in which cases only the spouse who may have suffered therefrom may institute it; and that of impotency, in which the action appertains to either spouse and to the persons who may have an interest in the anullment.

The action lapses and marriages are confirmed in the respective cases if the spouses having lived together during six months after the error has disappeared or after the force or the cause of intimidation has ceased, or if, after the abducted party having recovered liberty, he or she should not have instituted a suit for nullity during said period.

ART. 103. The civil tribunals shall take cognizance of the suits for annullments of marriages celebrated in conformity with the provisions of this chapter, and shall adopt the measures indicated in article 68, and shall render final judgment.

SECTION FOURTH.—*Divorce.*

ART. 104. Divorce only produces the suspension of the life in common of the spouses.

ART. 105. The legitimate causes for divorce are:

1. Adultery on the part of the wife in every case; and on the part of the husband when public scandal or disgrace of the wife results therefrom.

2. Personal violence actually inflicted or grave insults.

3. Violence exercised by the husband toward the wife in order to force her to change her religion.

4. The proposal of the husband to prostitute his wife.

5. The attempts of the husband or wife to corrupt their sons or to prostitute their daughters, and connivance in their corruption or prostitution.

6. The condemnation of a spouse to perpetual chains or hard labor (*cadena ó reclusión perpetua*).

ART. 106. The innocent spouse only can petition for divorce.

ART. 107. The provisions of article 103 shall be applicable to suits for divorce and to their interlocutory issues.

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TITLE V.

Paternity and filiation.

CHAPTER FIRST.

Legitimate children.

ART. 108. Children born after the one hundred and eighty days following that of the celebration of marriage and before the three hundred days following its dissolution or the separation of the spouses shall be presumed legitimate children.

Against this presumption no other proof shall be admitted than that of the physical impossibility of the husband to have had access to his wife during the first one hundred and twenty days of the three hundred next preceding the birth of the child.

ART. 109. A child shall be presumed to be legitimate, even though the mother should have declared against its legitimacy or should have been convicted of adultery.

ART. 110. The child born within the one hundred and eighty days following the celebration of a marriage shall be presumed to be legitimate if any of the following circumstances exist:

1. If the husband knew, before the marriage, that his wife was pregnant.
2. If he, being present, consented that in the certificate of birth his name be given the child borne by his wife.
3. If he has expressly or impliedly acknowledged the child as his own.

ART. 111. The husband or his heirs can disavow the legitimacy of a child born after the expiration of three hundred days from the dissolution of the marriage or the actual legal separation of the spouses, but both the child and the mother shall also have a right to prove in such cases the paternity of the husband.

ART. 112. The heirs can contest the legitimacy of the child in the following cases only:

1. If the husband died before the expiration of the term fixed for instituting his judicial action.
2. If he dies after bringing the suit without having withdrawn it.
3. If the child was born after the death of the husband.

ART. 113. The action to impugn the legitimacy of the child must be instituted within the two months following the record of the birth in the registry, should the husband be in the same place, or, in a proper case, any of his heirs.

When they are absent, the period shall be three months if they reside in Spain, and six if outside of Spain. When the birth of the child has been concealed, the period shall commence to be counted from the date of the discovery of the fraud.

ART. 114. Legitimate children have the right—

1. To bear the surnames of the father and of the mother.

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2. To receive support from the same, from their ascendants, and, in certain cases, from their brothers, in accordance with article 143.

3. To the legal portion (*legitima*) and other successional rights granted them by this code.

CHAPTER SECOND.

Proofs of the filiation of legitimate children.

ART. 115. The filiation of legitimate children is proven by the record of the birth, entered in the civil registry, or by an authentic instrument, or a final judgment in the cases referred to in articles 110 to 113 of the preceding chapter.

ART. 116. In the absence of the documents mentioned in the preceding article, filiation shall be proven by the uninterrupted enjoyment of the status of a legitimate child.

ART. 117. In the absence of the record of birth, authentic document, final sentence, or enjoyment of status, legitimate filiation may be proven by any means, provided there is a foundation of proof in writing coming from both parents, either jointly or severally.

ART. 118. The action to claim its legitimacy may be brought by the child at any time of its life and shall be transmitted to its heirs, should it die during minority or in a state of insanity. In such cases the heirs shall be allowed a period of five years in which to institute the action.

The action already instituted by the child is transmitted by its death to the heirs, if it has not lapsed before then.

CHAPTER THIRD.

Legitimized children.

ART. 119. Only natural children can be legitimized.

Natural children are those born out of wedlock of parents who, at the time of the conception of the child, could have married with or without dispensation.

ART. 120. Legitimation shall take place—

1. By the subsequent marriage of the parents.

2. By royal concession.

ART. 121. Children shall only be considered as legitimized by a subsequent marriage when they have been acknowledged by the parents before or after the celebration thereof.

ART. 122. Those legitimized by a subsequent marriage shall enjoy the same rights as legitimate children.

ART. 123. Legitimation shall produce its effects in any case from the date of the marriage.

ART. 124. The legitimation of the children who died before the celebration of the marriage shall benefit their descendants.

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ART. 125. For the legitimation by royal concession the following requisites are necessary:

1. That legitimation by subsequent marriage is not possible.

2. That it be asked by the parents or by one of them.

3. That the father or mother requesting it has no legitimate children, nor children legitimized by subsequent marriage, nor descendants of the same.

4. That if the person requesting it is married, he or she obtains the consent of the other spouse.

ART. 126. Legitimation by royal concession may also be obtained by the child whose deceased father or mother has expressed in his or her will or in a public instrument a wish to legitimize it, provided the condition established in No. 3 of the preceding article is complied with.

ART. 127. Legitimation by royal concession entitles the legitimized child:

1. To bear the surname of the father or mother who requested it.

2. To receive support from the same in the manner mentioned in article 143.

3. To the hereditary portion established in this code.

ART. 128. The legitimation may be impugned by those who consider their rights injured when it is granted to persons not having the legal status of natural children, or when the requirements mentioned in this chapter do not exist.

CHAPTER FOURTH.

Illegitimate children.

SECTION FIRST.—*Acknowledgment of natural children.*

ART. 129. A natural child may be acknowledged by the father and mother jointly or by only one of them.

ART. 130. In case the acknowledgment is made by one of the parents only, it shall be presumed that the child is a natural one if the person acknowledging it had at the time of the conception legal capacity to contract marriage.

ART. 131. The acknowledgment of a natural child shall be made in the record of birth, by will, or by any other public instrument.

ART. 132. When the father or mother shall make the acknowledgment separately, he or she shall not reveal the name of the person by whom the child was had, nor state any circumstance by which it may be discovered.

Public officials shall not authenticate any instrument violating this provision. If, notwithstanding this prohibition, they should do so, they shall incur a fine of 125 to 500 pesetas, and, besides, the words containing such revelation shall be stricken out officially.

ART. 133. A child of age can not be acknowledged without its consent.

When the acknowledgment of the minor is not made in the record of

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birth or in a will, judicial approval, with a hearing of the Department of Public Prosecution, shall be required.

The minor may, in any case, contest the acknowledgment within the four years following his or her majority.

ART. 134. An acknowledged natural child has a right:

1. To bear the surname of the person acknowledging it.

2. To receive support from the same, in accordance with article 143.

3. To receive, in a proper case, the hereditary portion fixed in this code.

ART. 135. The father is obliged to acknowledge the natural child in the following cases:

1. When an indisputable paper written by him, expressly acknowledging his paternity, is in existence.

2. When the child is in uninterrupted enjoyment of the status of a natural child of the defendant father, justified by direct acts of the said father or of his family.

In cases of violation, ravishment, or rape, the provisions of the penal code shall be observed with regard to the acknowledgment of the issue.

ART. 136. The mother is obliged to recognize the natural child:

1. When the child is, with regard to the mother, included in any of the cases stated in the preceding article.

2. When the fact of the birth and the identity of the child are duly proven.

ART. 137. The actions for the acknowledgment of natural children can be instituted only during the life of the presumed parents, except in the following cases:

1. If the father or mother died during the minority of the child, in which case the latter may institute the action before the expiration of the first four years of its majority.

2. If, after the death of the father or mother, some instrument, before unknown, should be discovered in which the child is expressly acknowledged.

In this case the action must be instituted within the six months following the discovery of such instrument.

ART. 138. The acknowledgment of a child which does not have the condition of the second paragraph of article 119, or in which the prescriptions of this section have not been complied with, may be contested by those it injures.

SECTION SECOND.—*Other illegitimate children.*

ART. 139. Illegitimate children not in the enjoyment of the legal status of natural children shall only have the right to claim support from their parents in accordance with article 143.

ART. 140. The right to support, referred to in the preceding article, can only be claimed—

1. If the paternity or maternity is inferred from a final judgment rendered in a criminal or civil action.

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2. If the paternity or maternity is shown in an indisputable document, from the father or mother, in which the filiation is expressly acknowledged.

3. With regard to the mother, if the fact of the birth and the identity of the child are fully proven.

ART. 141. With the exception of the cases mentioned in Nos. 1 and 2 of the preceding article, no judicial complaint shall be admitted, the purpose of which may be to investigate either directly or indirectly the paternity of illegitimate children who have not the legal status of natural children.

TITLE VI.

The support of relations.

ART. 142. By support is understood all that is requisite for maintenance, residence, clothing, and medical assistance, according to the social standing of the family.

Support includes also the education and instruction of the party receiving it when he or she is a minor.

ART. 143. The following are obliged to mutually support each other to the full extent fixed in the preceding article:

1. The spouses.
2. Legitimate ascendants and descendants.
3. Parents and children legitimized by royal concession and the legitimate descendants of the latter.
4. Parents and acknowledged natural children, and the legitimate descendants of the latter.

Parents and illegitimate children not having the legal status of natural children, owe each other, by way of support, all the help necessary for their subsistence. Parents, besides, are bound to bear the expenses of the elementary instruction of the children as well as the teaching of a profession, art, or trade.

Brothers and sisters also owe to legitimate brothers and sisters, even when only on the mother's or father's side, the necessary assistance for living, when by a physical or moral defect or for any other reason not chargeable to the recipient, the latter should not be able to support himself or herself. In this assistance is included, in a proper case, the necessary expenses to defray the costs of the elementary instruction and for the teaching of a profession, art, or trade.

ART. 144. The demand for support, when proper, and when two or more are obliged to give it, shall be made in the following order:

1. Of the spouse.
2. Of the descendants in the nearest degree.
3. Of the ascendants also in the nearest degree.
4. Of the brothers.

Between descendants and ascendants the graduation shall be regulated by the order in which they are called to the legitimate succession of the person entitled to support.

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ART. 145. Whenever the obligation to support is charged on two or more persons, the payment of the pension shall be divided among them at a rate in proportion to their respective means.

However, in case of urgent necessity and in special circumstances the judge may force only one of them to pay it temporarily, without prejudice to his right to claim from the other parties obligated the portion that is due from them.

When two or more persons entitled thereto claim support at the same time, from the same person legally bound to give it, and such person has not sufficient means to pay for all, the order established in the preceding article shall be observed, unless the persons claiming the support are the spouse and a child subject to the parental authority, in which case, the latter shall be preferred to the former.

ART. 146. The amount of support, in the cases mentioned in the four numbers of article 143, shall be in proportion to the capital or means of the persons giving it and to the requirements of the recipient.

ART. 147. Support, in the cases to which the preceding article refers shall be reduced or increased proportionately according to the increase or reduction of the necessities of the recipient and the means of the person obliged to give it.

ART. 148. The obligation to give support may be enforced from the moment the person having a right to claim it requires it for his or her maintenance, but it shall be paid only from the date of the claim.

Payment shall be made monthly in advance, and when the recipient dies, his or her heirs shall not be obliged to refund what the latter may have received in advance.

ART. 149. The person obliged to give support may, at his option, do so either by paying the pension that may be fixed, or by receiving and supporting in his or her own home the person having a right thereto.

ART. 150. The obligation to support ceases with the death of the person obliged to give it, even if paying it in compliance with a final judgment.

ART. 151. The right to support can not be renounced or transferred to a third party. Neither can it be set off against what the recipient owes to the party obliged to give it.

But pensions for support in arrears may be set off and renounced, and the right to claim them may be transferred for a good or valuable consideration.

ART. 152. The obligation to give support shall cease:

1. By the death of the recipient.

2. If the means of the person obliged to pay it are reduced to such a point that he or she can not pay it without neglecting his or her own requirements and those of his or her family.

3. If the recipient is able to work at a trade, profession, or industry, or has obtained employment or improved his or her fortune in such a manner that the pension for support is not required for his or her support.

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4. If the recipient, be he or be he not an heir by force of law, commits any offense which gives rise to disinheritance.

5. When the recipient is a descendant of the person obliged to give support, and the necessity of the former arises from bad conduct or from want of application to work, while such reason exists.

ART. 153. The foregoing provisions are applicable to the other cases in which, by this code, by will, or by agreement, a right to support may arise, excepting what is stipulated, ordered by the testator, or provided by law for the special case in question.

TITLE VII.

The parental authority.

CHAPTER FIRST.

General provision.

ART. 154. The father, and, in his absence, the mother, has authority over their legitimate children, not emancipated, and the children are bound to obey them while they remain under their authority and always to show them respect and reverence.

Acknowledged natural children and adopted minors are under the authority of the father or of the mother who acknowledges or adopts them, and must also comply with the obligations referred to in the preceding paragraph.

CHAPTER SECOND.

Effects of parental authority with regard to the persons of the children.

ART. 155. The father, and, in his absence, the mother, has, with regard to their children not emancipated—

1. The duty of supporting them, to keep them in their company, educate and instruct them in proportion to their means, and represent them in the exercise of all actions that may redound to their benefit.

2. The right to correct and punish them moderately.

ART. 156. The father, and, in a proper case, the mother, may request the assistance of the administrative authorities, which must be given to them in support of their own authority over their children, not emancipated, either within the domestic hearth or for the detention and even for the retention of the same in educational institutions or in institutions legally authorized to receive them.

They can also demand the intervention of the municipal judge for the purpose of imposing on their children, up to one month's detention in a correctional institution, devoted to that purpose, the order of the father or mother with the countersignature of the judge being sufficient for enforcing such detention.

The provisions of the two preceding paragraphs include children, either legitimate, legitimized, acknowleged, natural, or adopted.

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ART. 157. When the father or mother has contracted a second marriage and the child should be born of a prior marriage, they must state to the judge the reasons for their decision to punish him or her, and the judge shall hear the child in person and decree or refuse to order the detention without appeal. The same thing shall be observed when the child, not emancipated, holds any position or works at any trade, even when the parents have not contracted a second marriage.

ART. 158. The father, and in a proper case the mother, shall pay for the support of the detained child; but they can not interfere in the management of the institution where it is detained, being only permitted to have it released when they deem proper.

CHAPTER THIRD.

Effect of parental authority with regard to the property of the children.

ART. 159. The father, or, in his absence, the mother, is the legal administrator of the property of the children who are under their authority.

ART. 160. The ownership of property which a child not emancipated may have acquired, or acquires by its work or industry or for any good consideration, is vested in the child, and the usufruct in the father or mother who has him or her under his or her authority and in his or her company; but if the child, with the consent of the parents, lives independently of them, he or she shall be considered as emancipated for all purposes with regard to said property and shall own it and enjoy the usufruct and administration thereof.

ART. 161. The ownership and usufruct of what the child acquires with the capital of his or her parents is vested in the latter; but should the parents expressly assign to him or her the whole or a part of the profits which he or she may obtain, such profits shall not be chargeable to the latter in the inheritance.

ART. 162. The ownership or usufruct of the property or income donated or left by will to a child not emancipated, to cover the cost of his or her education and instruction, is vested in him or her; but the father or the mother shall have the administration thereof if no other proviso has been made in the gifts or bequest, in which case the will of the donors shall be strictly observed.

ART. 163. The parents have, with regard to the property of the children, the usufruct or administration of which belongs to them, the obligations of every usufructuary or administrator and the special obligations established by section 3, title 5, of the mortgage law.

An inventory shall be made with the intervention of the department of public prosecution of the property of the children in which the parents have the administration only, and on the recommendation of the said department the judge may decree the deposit in public securities of the property belonging to the child.

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ART. 164. The father, or the mother in a proper case, can not alienate the real property of the child, the usufruct or administration of which belongs to them, nor encumber the same, except for sufficient reasons of utility or necessity, and after authorization from the judge of the domicile, hearing the department of public prosecution, excepting the provisions which, with regard to the effects of transfers, the mortgage law establishes.

ART. 165. Whenever, in any matter, the father or mother may have an interest opposed to that of their children, not emancipated, a next friend shall be appointed for the latter, to represent them in court or otherwise.

The judge, on petition of the father or of the mother, of the said minor, of the department of public prosecution, or of any other person qualified to appear in court, shall appoint, as the next friend, the relative of the minor to whom the legitimate guardianship should belong in such cases, and, in the absence of the latter, another relative or any other person.

ART. 166. The parents who acknowledge or adopt children do not acquire the usufruct of their property, nor shall they have the administration of such property, unless they give bond for the results thereof to the satisfaction of the judge of the domicile of the minor or of the persons who must consent to the adoption.

CHAPTER FOURTH.

Manner of termination of the parental authority.

ART. 167. Parental authority terminates—

1. By the death of the parents or of the child.
2. By emancipation.
3. By the adoption of the child.

ART. 168. The mother who contracts a second marriage loses her parental authority over her children, unless the deceased husband, the father of the latter, should have in his will made express provision for the remarriage of his widow, and had ordered that in such case she was to preserve and exercise the parental authority over their children.

ART. 169. The father, and, in a proper case, the mother, loses the authority over their children—

1. When, by a final sentence in a criminal case, the said authority is taken away as a penalty.
2. When, by a final judgment in a suit for divorce, it is thus determined during the time the effects thereof are in force.

ART. 170. The parental authority is suspended by the incapacity or absence of the father or, in a proper case, of the mother, when judicially decided, and also by civil interdiction.

ART. 171. The courts may deprive the parents of the parental authority or suspend the exercise thereof when they treat their children with

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excessive cruelty, or if they give them corrupting orders, advice, or examples. In these cases they can also deprive the parents, either totally or partially, of the usufruct of the property of the child, or take such steps as they may deem advisable for the interests of the latter.

ART. 172. If the widowed mother who has remarried becomes again a widow, she shall recover from that moment her authority over all the children not emancipated.

CHAPTER FIFTH.

Adoption.

ART. 173. Persons who are in the full enjoyment of their civil rights and have attained 45 years of age can adopt. The adopter must be at least fifteen years older than the adopted.

ART. 174. Adoption is forbidden—

1. To the clergy.
2. To those having legitimate or legitimized descendants.
3. To the guardian with regard to his ward, until his accounts have been finally approved.
4. To a spouse without the consent of his consort. Spouses may adopt jointly, and, with the exception of this case, nobody can be adopted by more than one person.

ART. 175. The adopted may use together with the surname of his or her family that of the adopter, this being stated in the deed of adoption.

ART. 176. The adopter and the adopted owe each other mutual support. This obligation is understood without prejudice to the preferred right of acknowledged natural children and of the ascendants of the adopter to be supported by the latter.

ART. 177. The adopter does not acquire any right whatsoever to inherit from the adopted. Neither does the adopted acquire any right to inherit from the adopter, except by will, unless the adopter in the deed of adoption has bound himself or herself to make said child his or her heir. This obligation shall produce no effect when the adopted dies before the adopter. The adopted retains all the rights belonging to him or her in his or her natural family excepting those relating to the parental authority.

ART. 178. The adoption shall be made with judicial authorization and the consent of the adopted, if of age, must necessarily be given; when a minor, that of the persons who must give consent to his or her marriage, and, when incapacitated, that of the guardian. The Department of Public Prosecution shall be heard on the matter; and the judge, after the proceedings he may consider necessary, shall approve the adoption, if it is according to law, and he believes it beneficial for the adopted.

ART. 179. After the adoption has been finally approved by the judge, an instrument shall be drafted stating therein the conditions with which it took place, and it shall be entered in the proper civil registry.

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ART. 180. The minor or the incapacitated person who has been adopted may contest the adoption within the four years following his or her majority or the date on which his or her incapacity ceased to exist.

TITLE VIII.

Absence.

CHAPTER FIRST.

Provisional measures in cases of absence.

ART. 181. When a person has disappeared from his domicile and his whereabouts is unknown and without leaving any attorney to manage his property, the judge, at the instance of a lawful person or at that of the Department of Public Prosecution, may appoint some person to represent him in all that may be necessary.

The same shall be done when, under similar circumstances, the power conferred by the absentee lapses.

ART. 182. After the appointment referred to in the preceding chapter has been made, the judge shall take the necessary steps to secure the rights and interests of the absentee, and shall determine the powers, obligations, and remuneration of his representative, regulating them, according to the circumstances, by the provisions relating to guardians.

ART. 183. The spouse who absents himself or herself shall be represented by the one present, whenever they are not legally separated.

If the spouse is a minor, a guardian shall be appointed in the usual manner.

In the absence of the spouse, the absentee shall be represented by the parents, children, or grandparents, in the order established in article 220.

CHAPTER SECOND.

Declarations of absence.

ART. 184. After two years have elapsed without any news of the absentee having been received, or from the receipt of the last news, and five years, in case the absentee has left a person in charge of the administration of his property, then the absence may be declared.

ART. 185. The declaration of absence may be demanded by—

1. The spouse who is present.
2. The heirs instituted in a will, who present a copy of the same, which is *prima facie* proof.
3. The relatives who are to inherit *ab intestato.*
4. Those having in the property of the absentee some right depending on the condition of his death.

ART. 186. The judicial declaration of absence shall produce no effect until six months after its publication in the official newspapers.

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CHAPTER THIRD.

Administration of the property of an absentee.

ART. 187. The administration of the property of the absentee is to be given, according to the order established in article 220, to the persons specified therein.

ART. 188. The wife of the absentee, if of age, may freely dispose of the property of any kind whatsoever belonging to her, but she can not alienate, exchange, or mortgage the husband's private property, nor that of the conjugal partnership, except with judicial authorization.

ART. 189. When the administration appertains to the children of the absentee and they are minors, a guardian shall be appointed for them who shall take charge of the property with the legal formalities.

ART. 190. The administration shall cease in any of the following cases:

1. When the absentee appears, either in person or through an attorney.
2. When the death of the absentee is proved and his testamentary or intestate heirs appear.
3. When a third party appears proving by proper instruments that he has acquired the property of the absentee by purchase or in any other manner.

In such cases the administrator shall cease in the discharge of his duties and the property shall be placed at the disposal of those having a right thereto.

CHAPTER FOURTH.

Presumption of the death of the absentee.

ART. 191. After thirty years have elapsed from the date of the disappearance of the absentee or since the last news was received of him, or ninety years from his birth, the judge, at the instance of an interested party, shall declare the presumption of his death.

ART. 192. The judgment declaring the presumption of death of an absentee shall not go into effect until after six months, counted from its publication in the official newspapers.

ART. 193. After the judgment of the presumption of death has been declared final, succession to the estate of the absentee shall be opened and its distribution shall be adjudicated with the formalities of testamentary or intestate proceedings, as the case may be.

ART. 194. Should the absentee appear, or, if without appearing, his existence be proven, he shall recover his property in its condition at the time and the value of that conveyed, or that acquired thereby; but he can claim neither the profits nor the income.

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CHAPTER FIFTH.

Effects of absence upon the eventual rights of the absentee.

ART. 195. The person claiming a right belonging to another person, whose existence is not acknowledged, is bound to prove that such other person existed at the time his existence was necessary to acquire the same.

ART. 196. Without prejudice to the provisions contained in the preceding article, when a succession has been opened in which an absentee is interested, the share of the absentee shall accrue to his coheirs, unless there is some person having rights of his own to claim it. Both the former and the latter, in a proper case, must make an inventory of said property with the intervention of the department of public prosecution.

ART. 197. The provisions of the foregoing article are to be understood without prejudice to proceedings by petition of inheritance or other rights of the absentee, and of his personal or legal representatives. Such rights shall not be extinguished, except by the lapse of time fixed for prescription. In the record to be made in the registry of the real property, which may accrue to the coheirs, there shall be stated that it is subject to the provisions of this article.

ART. 198. Those who have taken possession of the estate shall become owners of the income received in good faith. While the absentee does not appear his rights shall not be exercised by his personal or legal representatives.

TITLE IX.

Guardianship.

CHAPTER FIRST.

General provisions.

ART. 199. The object of guardianship is the custody of the person and property or only of the property of those who, not being under the parental authority, are incapable of taking care of themselves.

ART. 200. The following are subject to guardianship:

1. Minors not legally emancipated.
2. Insane and demented persons, even though they have lucid intervals, and the deaf and dumb who do not know how to read and write.
3. Those who have been declared prodigal by a final judgment.
4. Those who are suffering the penalty of civil interdiction.

ART. 201. Guardianship shall be exercised by a single guardian under the surveillance of a protutor[1] and the family council.

ART. 202. The offices of guardian and protutor can not be renounced unless for a lawful cause duly proven.

[1] A person managing the business of a minor, although not appointed as guardian.

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ART. 203. The municipal judges of the places in which persons subject to guardianship reside shall provide for their care and that of their personal property until a guardian is appointed, when there is no other person charged with these duties under the law.

Should they not do so they shall be liable for the damages suffered by minors or by incapacitated persons by reason thereof.

ART. 204. Guardianship is conferred—

1. By will.
2. By law.
3. By the family council.

ART. 205. The guardian shall not enter upon the discharge of his duties until his appointment has been recorded in the registry of guardianships.

CHAPTER SECOND.

Testamentary guardianship.

ART. 206. The father may appoint a guardian and a protutor for his minor children or for those of age who are incapacitated, be they legitimate or acknowledged natural, or for any of his illegitimate children whom he is obliged to support, according to article 139.

The mother has the same privilege, but if she has contracted a second marriage the appointment made by her for the children of her first marriage shall not be valid without the approval of the family council.

In any case it shall be necessary that the person appointed guardian or protutor be not subject to the authority of any other person.

ART. 207. A guardian may also be appointed for minors or incapacitated persons by the person leaving them an inheritance or an important legacy. The appointment, however, shall not be valid until the family council has decided to accept the inheritance or legacy.

ART. 208. The father as well as the mother may appoint a guardian for each one of their children, and make different appointments in order that the appointees may substitute one another.

In case of doubt, there shall be understood that a single guardian has been appointed for all the children, and the position shall be conferred upon the first of those named in the appointment.

ART. 209. If different persons should have appointed a guardian for the same minor, the position shall devolve upon:

1. The one designated by the father or by the mother.
2. The one appointed by the stranger who has made the minor or incapacitated person his heir, if the amount of the inheritance is important.
3. The one who has been designated by the person leaving an important legacy.

If there is more than one guardian in any of the cases of Nos. 2 and 3 of this article, the family council shall declare which one is to be preferred.

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ART. 210. When a guardian is in the discharge of his duties and the one appointed by the father appears, the guardianship shall immediately be transferred to the latter. If the guardian who appears is the one appointed by a stranger, included in numbers 2 and 3 of the preceding article, he shall limit himself to the administration of the property of the person who appointed him until the incumbent guardian vacates.

CHAPTER THIRD.

Legitimate guardianship.

SECTION FIRST.—*Guardianship of minors.*

ART. 211. Legitimate guardianship of minors, not emancipated, appertains solely—

1. To the paternal grandfather.
2. To the maternal grandfather.
3. To the paternal and maternal grandmothers, in the same order, while they remain widows.
4. To the eldest of the male brothers of full blood, and, in the absence of the latter, to the eldest of the brothers on the paternal or maternal side.

The guardianship referred to in this article does not apply to illegitimate children.

ART. 212. Heads of foundling institutions are the guardians of those kept and educated therein. The representation in court of such officials as guardians shall be assumed by the department of public prosecution.

SECTION SECOND.

Guardianship of the insane and of the deaf and dumb.

ART. 213. No guardians shall be appointed for insane, demented, and deaf and dumb persons of age without a previous declaration to the effect that they are incapable of managing their property.

ART. 214. This declaration may be asked for by the spouse and by the relatives of the person presumed to be incapacitated who may have rights to succeed him in case of intestacy.

ART. 215. The department of public prosecution must demand it:

1. When the person in question is a raving maniac.
2. When none of the persons mentioned in the preceding article exists, or when they do not make use of the privilege granted them therein.
3. When the spouse and the heirs of the person presumed to be incapacitated are minors or lack the personality necessary in order to appear in court.

In all these cases the court shall appoint a next friend for the person presumed to be incapacitated, who does not wish or can not defend himself. In all other cases the department of public prosecution shall defend them.

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ART. 216. The courts, before declaring the incapacity, shall hear the family council and shall personally examine the persons complained of as incapacitated.

ART. 217. The relatives who have requested the declaration of incapacity can not give information to the court as members of the family council; but they have a right to be heard by the latter when they demand it.

ART. 218. The declaration of incapacity shall be made summarily. The one which refers to the deaf and dumb shall fix the extent and limits of the guardianship according to their degree of incapacity.

ART. 219. Against the decrees terminating the proceedings for incapacity the interested parties may institute an ordinary suit. The next friend of the incapacitated person shall, however, require special authorization therefor from the family council.

ART. 220. The guardianship of the insane and of the deaf and dumb appertains:

1. To the spouse not legally separated.
2. To the father, and, in a proper case, to the mother.
3. To the children.
4. To the grandparents.
5. To the brothers and to the unmarried sisters, with due preference to the double relationships stated in No. 4 of article 211.

If there are several children, brothers or sisters, the male shall be preferred to the female, and the oldest to the youngest.

When there are both paternal and maternal grandparents, the male shall also be preferred; and in case they are of the same sex, those of the paternal line.

SECTION THIRD.

Guardianship of prodigals.

ART. 221. The declaration of prodigality must be made in a suit in which both parties were given a hearing.

The judgment shall determine the acts which are forbidden to the incapacitated person, the powers which the guardian is to exercise in the name of the former, and the cases in which one or the other is bound to consult the family council.

ART. 222. The declaration, referred to in the preceding article, can be demanded only by the spouse and by the compulsory legal heirs of the prodigal, and in exceptional cases by the department of public prosecution, either at its own instance or at that of some relative of the former, when they are minors or incapacitated persons.

ART. 223. When the defendant does not appear at the trial he shall be represented by the department of public prosecution, and if the latter be a party thereto, by a next friend appointed by the court, without prejudice to the provisions of the law of civil procedure with regard to proceedings in default.

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ART. 224. The declaration of prodigality does not deprive the prodigal of the marital and parental authority, nor does it give the guardian any authority over the person of the prodigal.

ART. 225. The guardian shall administer the property of the children whom a prodigal may have had from a previous marriage.

The wife shall administer her dowry and parapherna, the property of the children in common, and that of the conjugal partnership. She requires judicial authorization to sell the same.

ART. 226. The acts of a prodigal, prior to the request for interdiction, can not be contested on account of prodigality.

ART. 227. The guardianship of the prodigal appertains—

1. To the father, and, in a proper case, to the mother.
2. To the paternal and maternal grandparents.
3. To the eldest of the emancipated male children.

SECTION FOURTH.

Guardianship of persons suffering interdiction.

ART. 228. When the judgment in which a penalty of interdiction is imposed, is final, the department of public prosecution shall demand that articles 203 and 293 be complied with. Should the representative of said department not do so he shall be liable for the damages and injuries caused thereby.

The spouse and the intestate heirs of him so interdicted may also demand it.

ART. 229. This guardianship shall be limited to the administration of the property and to the representation in court of the interdicted person.

The guardian of the interdicted person shall be obliged, furthermore, to care for the person and property of the minors or incapacitated persons who are under the authority of the person subject to interdiction, until another guardian is provided for them.

The wife of the interdicted person shall exercise the parental authority over their common children while the interdiction lasts.

If she is a minor she shall act under the direction of her father and, in a proper case, that of her mother, and in the absence of both, that of her guardian.

ART. 230. The guardianship of those suffering interdiction is granted in accordance with the order established in article 220.

CHAPTER FOURTH.

Guardianship by appointment.

ART. 231. Should there be neither testamentary guardians, nor persons called by law to the exercise of a vacant guardianship, it is the duty of the family council to elect the guardian in all the cases mentioned in article 200.

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ART. 232. The municipal judge who neglects to call a meeting of the family council in any case in which a guardian must be provided for minors or incapacitated persons, shall be liable for the damage or injury caused by his negligence.

CHAPTER FIFTH.

Protutors.

ART. 233. The family council is entitled to appoint a protutor when he has not been appointed by those who have a right to elect a guardian for minors.

ART. 234. The guardian can not begin to exercise guardianship until a protutor has been appointed. If he fails to apply for this appointment, he shall be removed from the guardianship and shall be liable for the damages suffered by the minor.

ART. 235. The appointment of a protutor shall not be given to a relative of the same line as the guardian.

ART. 236. The protutor shall—

1. Supervise the inventory of the property of the minor and the constitution of the bond of the guardian, when proper.
2. Enforce the rights of the minor in and out of court whenever they are opposed to the interests of the guardian.
3. Call the attention of the family council to the management of the guardian, whenever he may consider it prejudicial to the person or to the interests of the minor.
4. Call a meeting of the family council for the appointment of a new guardian when the guardianship is vacant or has been abandoned.
5. Discharge the other duties provided by law.

The protutor shall be liable for the damages and injuries caused to the minor by his omission or negligence in complying with such duties.

The protutor may attend the deliberations of the family council and take part therein, but he has no right of vote.

CHAPTER SIXTH.

Persons disqualified to be guardians and protutors and removal of the same.

ARTICLE 237. The following can not be guardians or protutors:

1. Those subject to guardianship.
2. Those who have been punished for the crimes of robbery, theft, fraud, forgery, corruption of minors, or public scandal.
3. Those condemned to any corporeal punishment, while they remain under sentence.
4. Those who have been legally removed from a prior guardianship.
5. Persons of bad conduct, or those having no visible means of support.
6. Bankrupts and insolvents, not discharged.
7. Women, with the exception of the cases in which they are expressly designated by law.

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8. Those who, at the time of taking charge of the guardianship, have a lawsuit pending with the minor in regard to his civil status.

9. Those in litigation with the minor in regard to the ownership of his property, unless the father and, in a proper case, the mother, being aware thereof, have disposed otherwise.

10. Those owing the minor large sums, unless they have been appointed by the father and, in a proper case, by the mother, with knowledge of the debt.

11. The relatives mentioned in the second paragraph of article 293, and the testamentary guardians who may not have fulfilled the obligation imposed upon them by said article.

12. Professed members of monastic orders.

13. Foreigners not residing in Spain.

ART. 238. The following shall be removed from guardianship:

1. Those who, after having qualified, are included in one of the cases of incapacity mentioned in numbers 1, 2, 3, 4, 5, 6, 8, 12, and 13 of the foregoing article.

2. Those who have assumed the administration of the guardianship without calling the family council nor having asked for the appointment of a protutor, or without having given bond, in a proper case, and not having recorded the mortgage security.

3. Those who have not made the inventory within the period and in the manner prescribed by law or have not made it faithfully.

4. Those who have not behaved properly in the discharge of the guardianship.

ART. 239. The family council shall not declare the incapacity of guardians and protutors or order their removal without summoning and hearing them if they appear.

ART. 240. After the incapacity has been declared or the removal has been ordered by the family council the decision shall be considered final, and the vacant guardianship shall be filled if the guardian does not institute his claims before the court within the fifteen days following that on which the decision was communicated to him.

ART. 241. When the guardian institutes a judicial suit the council shall litigate it, at the expense of the minor; but the members thereof may be personally adjudged to pay the costs, if they have acted with well-known malice.

ART. 242. When the decision of the family council is favorable to the guardian, and has been unanimously adopted, no remedy whatsoever shall be entertained against it.

ART. 243. If, by reason of incapacity, the guardian should not enter upon the discharge of his duties, the family council shall attend to the duties of the guardianship until a final decision is adopted with regard to the obstacle.

If the guardian has already entered upon the discharge of his duties, and the family council declares his incapacity or orders his removal, the

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decisions it may adopt to provide for the duties of the guardianship, in case of litigation, shall not be carried out without previous judicial approval.

CHAPTER SEVENTH.

Excuses for not accepting guardianship and protutorship.

ART. 244. The following may excuse themselves from guardianship and protutorship:

1. The ministers of the Crown.
2. The presidents of the colegislative houses, of the council of state, of the supreme court, of the supreme council of war and navy, and of the court of accounts of the Kingdom.
3. Archbishops and bishops.
4. Associate justices, judges, and officials of the department of public prosecution.
5. Those who exercise authority immediately depending on the Government.
6. Military men in active service.
7. Clergymen in charge of parishes.
8. Those having under their authority five legitimate children.
9. Those who are so poor that they can not attend to the guardianship without impairing their livelihood.
10. Those who in consequence of continuous ill health or because of inability to read or write can not well fulfill the duties of the charge.
11. Persons over sixty years of age.
12. Persons who are already guardians or protutors of another person.

ART. 245. Those who are not relatives of the minor or incapacitated person, are not obliged to accept the guardianship, if, within the territory of the court appointing the guardian, there are relatives within the sixth degree who may discharge said duties.

ART. 246. The person excused, may, at the request of the guardian or protutor, be compelled to accept the guardianship as soon as the cause for the exemption has ceased to exist.

ART. 247. An excuse, which has not been given before the family council at the meeting held for the purpose of deciding upon the guardianship, shall not be admitted.

If the guardian was not present at the meeting of the council, or was not previously informed of his appointment, he must make the excuse within the ten days following the date on which he has been notified thereof.

ART. 248. If the causes of exemption should be subsequent to the acceptance of the guardianship, the period for making them shall begin to be counted from the day on which the guardian may have had knowledge thereof.

ART. 249. The resolution by which the family council rejects an excuse may be impugned before the courts within the period of fifteen days.

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The resolution of the family council shall be enforced by the same at the expense of the minor; but if it should be confirmed, the person instituting the suit shall be adjudged to the payment of the costs.

ART. 250. During the pendency of the suit to be excused the person instituting the same shall be obliged to exercise the guardianship. Should he not do so, the family council shall appoint some person to substitute him, and the person substituted shall be liable for the management of the substitute in case the excuse is not accepted.

ART. 251. The testamentary guardian who excuses himself from the guardianship shall lose whatever may have been voluntarily left him by the person who appointed him.

CHAPTER EIGHTH.

Bonds of guardians.

ART. 252. A guardian before assuming the guardianship shall give bond as security for a faithful discharge of his duties.

ART. 253. The bond must be secured either by a mortgage or by a pledge.

A personal bond shall be accepted only when it is impossible to give one of the above bonds. The security given by the bondsmen shall not prevent the adoption of any decisions advisable for the preservation of the property of the minor or incapacitated person.

ART. 254. The bond shall secure:

1. The value of the personal property which may come into the possession of the guardian.
2. The income or profits which the property of the minor or incapacitated person may produce during one year.
3. The profits which the minor may receive from any commercial or industrial enterprise during one year.

ART. 255. The guardian may appeal to the courts from the resolutions of the family council fixing the amount or qualifying the bond, but he shall not take possession of his office without having given the bond required of him.

ART. 256. Until the bond is executed the protutor shall discharge the administrative functions which the family council may consider indispensable for the safe-keeping of the property and the collection of its proceeds.

ART. 257. The mortgage bond shall be recorded in the Registry of Property. The pledge bond shall be constituted by the deposit of securities or bonds in the public institutions authorized for this purpose.

ART. 258. The record or deposit shall be demanded:

1. By the guardian.
2. By the protutor.
3. By any of the members of the family council.

Those not doing so shall be liable for the loss and damage by reason thereof.

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ART. 259. The bond may be increased or reduced, during the exercise of the guardianship, according to the fluctuations suffered by the capital of the minor or incapacitated person and by the securities of which the bond is constituted.

The bond can not be totally canceled until after the accounts of the guardianship are approved and the guardian has extinguished all the liabilities of his management.

ART. 260. The following are exempted from giving bond for guardianship:

1. The father, the mother, and the grandparents, in the cases in which they are designated to the guardianship of their descendants.

2. The testamentary guardian, released by the father, or by the mother in a proper case, from this obligation. This exception shall cease when, subsequently to his appointment, causes not considered by the testator should arise which make the bond necessary, in the opinion of the family council.

3. A guardian appointed, without requiring bond, by a stranger who may have made the minor or incapacitated person his heir or left him an important legacy. In such case the exemption shall be limited to the property or income of which the inheritance or legacy consists.

CHAPTER NINTH.

Exercise of the guardianship.

ART. 261. The family council shall give possession to the guardians and protutors.

ART. 262. The guardian represents the minor or incapacitated person in all civil acts, with the exception of those which the latter may execute personally by express provision of law.

ART. 263. Minors and incapacitated persons subject to guardianship owe respect and obedience to the guardian. He may punish them in moderation.

ART. 264. The guardian is obliged—

1. To support and educate the minor or incapacitated person in accordance with his condition and with strict subjection to the orders of his or her parents, or, in the absence of the latter, to those which the family council may have adopted.

2. To endeavor, in any manner whatsoever possible, with the means of the insane, demented, or deaf and dumb to acquire or recover their capacity.

3. To make an inventory of the property which the guardianship may cover within the period fixed for this purpose by the family council.

4. To administer the estate of the minor or incapacitated person with the diligence of a good father of a family.

5. To ask at the proper time the authorization of the family council for all that he can not do without it.

6. To request the assistance of the protutor in all the cases in which the law requires it.

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ART. 265. The inventory shall be made with the assistance of the protutor and in the presence of two witnesses selected by the family council. The latter shall decide, according to the importance of the estate, if the inventory is, in addition, to be authorized by a notary.

ART. 266. The jewelry, valuable personal property, public securities, and commercial and industrial securities, which, in the judgment of the family council should not be in the possession of the guardian, shall be deposited in an institution established for this purpose.

The other personal property and chattels, if not appraised, shall be appraised by experts appointed by the family council.

ART. 267. The guardian, who, having been summoned for this purpose through a notary by the protutor or by the witnesses, should not enter in the inventory the credits he holds against the minor, shall be understood as renouncing them.

ART. 268. When the will of the person who appointed the guardian should make no mention of the allowance for support of the minor or incapacitated person, the family council, in view of the inventory, shall decide the part of the income or profit which shall be inverted therein.

This resolution may be modified in proportion to the increase or decrease of the inheritance of the minor or incapacitated person or when the condition of the latter changes.

ART. 209. The guardian requires the authority of the family council:

1. To impose on the minor the punishments referred to in number 2 of article 155, and in article 156.

2. To give to the minor a particular profession or trade when this has not been decided by the parents, and to modify the provisions they may have adopted.

3. To place the incapacitated person in a sanatorium, unless the guardianship is exercised by the father, the mother, or by a son.

4. To continue the commerce or industry in which the incapacitated person or his ascendants or those of the minor may have been engaged.

5. To alienate or encumber the property constituting the capital of minors or incapacitated persons, or to make contracts or execute instruments subject to record.

6. To invest any money remaining each year, after meeting the obligations of the guardianship.

7. To proceed with the distribution of the inheritance or of any other thing which the minor or incapacitated person may possess in common.

8. To withdraw from deposit any sum producing interest.

9. To loan and borrow money.

10. To accept without the benefit of inventory any inheritance or to repudiate the latter or the gifts.

11. To incur extraordinary expenses in connection with the estates, the administration of which is included in the guardianship.

12. To compromise and submit to arbitration the questions in which the minor or incapacitated person may be interested.

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13. To institute suits in the name of persons subject to guardianship, and to have recourse by appeal and cassation against the judgments in which they may have been rendered.

Complaints and recourses in verbal suits are excepted.

ART. 270. The family council can not authorize the guardian to alienate or encumber the property of the minor or incapacitated person unless it be for reasons of necessity or utility, which the guardian shall duly prove.

This authority shall be exercised in regard to specified things.

ART. 271. The family council, before granting authorization to encumber real property or constitute property rights in favor of third persons, may previously hear the opinion of experts with regard to the conditions of the encumbrance and possibilities of bettering it.

ART. 272. If real property, rights subject to record, jewelry, or personal property the value of which is over 4,000 pesetas, is in question, the alienation thereof shall be made at public auction with the intervention of the guardian or protutor.

Securities quoted on exchange, public as well as commercial or industrial, shall be sold by an exchange agent or by a commercial broker.

ART. 273. The guardian is liable for the legal interest on the capital of the minor, if by his omission or negligence it should remain unproductive or without investment.

ART. 274. The authorization to settle or compromise through arbitration must be requested in writing, the guardian stating all the conditions and advantages of the transaction.

The family council may receive the report of one or more lawyers, according to the importance of the matter, and shall grant or refuse such authorization. In case of granting it, it shall be stated in the instrument.

ART. 275. Guardians are forbidden—

1. To give or renounce things or rights belonging to the minor or incapacitated person.

Gifts made by reason of marriage by minors, with the approval of the persons who are to give their consent to the marriage, shall be valid, provided they do not exceed the limits fixed by law.

2. To collect from the debtors of the minor or incapacitated person, without the intervention of the protutor, amounts over 5,000 pesetas, unless they consist of interests, profits, or income.

Payments made without this requisite shall be valid with regard to the debtors, only when they prove that the amount received was invested for the benefit of the minor or incapacitated person.

3. To pay, without the intervention of the protutor, any sums due themselves.

4. To buy themselves, or through another person, the property of the minor or incapacitated person, unless they have been expressly authorized thereto by the family council.

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ART. 276. The guardian is entitled to compensation from the property of the minor or incapacitated person—

When it has not been fixed by those who appointed the testamentary guardian; or when the guardians are legitimate or appointed by the court, the family council shall fix it, taking into consideration the amount of the property and the labor entailed in its administration.

In no case shall the compensation be less than 4 per cent nor more than 10 per cent of the net income or proceeds of the property.

The guardian may appeal to the courts from the decision fixing his compensation.

ART. 277. Should the family council maintain its decision, it shall litigate at the expense of the minor or incapacitated person.

ART. 278. The guardianship terminates—

1. When the minor attains the age of twenty-three years, by qualification as to age, and by adoption.

2. By the cessation of the causes giving rise thereto, when incapacitated persons subject to interdiction or prodigals are in question.

CHAPTER TENTH.

Accounts of the guardianship.

ART. 279. Collateral relatives of the minor or incapacitated person, and strangers who have not obtained the appointment of guardian, with the assignment of proceeds for support, shall render to the family council annual accounts of their administration.

These accounts, after being examined by the protutor and audited by the council, shall be deposited in the office of the clerk of the court where the guardianship has been registered.

If the guardian does not agree to the decision of the council, he may apply to the courts in which the interests of the minor or incapacitated person shall be defended by the protutor.

ART. 280. The guardian, who may be replaced by another, shall, as well as his heirs, be obliged to render a general account of his guardianship to the one taking his place, which shall be examined and audited in the manner prescribed in the preceding article. The new guardian shall be liable to the minor for any losses and damages, should he not demand and examine the accounts of his predecessor.

ART. 281. When the guardianship terminates, the guardian or his heirs are obliged to render an account of the administration to the person who may have been subject thereto or to his personal or legal representatives.

ART. 282. The general accounts of the guardianship shall be audited and passed upon by the family council within a period not exceeding six months.

ART. 283. The accounts shall be accompanied by the proper vouchers. The only expenses which need not be proved are the minor ones for which a diligent father of a family does not generally ask a receipt.

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ART. 284. The expenses of rendering the accounts shall be borne by the minor or incapacitated person.

ART. 285. The legal representatives of the minor, or the latter if of age, can not enter into any agreement with the guardian relating to the administration of the guardianship until fifteen days have elapsed since the accounts duly proven were rendered.

The family council, without prejudice to the agreements the interested parties may come to after the expiration of this period, shall complain to the courts of any wrong which may have been committed by the guardian in the exercise of the guardianship.

ART. 286. The balance appearing from the general accounts in favor of or against the guardian shall earn legal interest.

In the first case, from the time payment is requested of the minor, after the delivery of his property.

In the second case, from the date of rendering the accounts, if they were rendered within the legal period, and, if not, from the expiration thereof.

ART. 287. The actions, which may mutually be brought by the guardian and the minor by reason of the exercise of the guardianship, are extinguished five years after the termination of the latter.

CHAPTER ELEVENTH.

Registration of guardianships.

ART. 288. In the courts of first instance there shall be one or more books in which there shall be entered the guardianships constituted during the year within their respective territories.

ART. 289. These books shall be in charge of a judicial clerk, who shall make the entries gratuitously.

ART. 290. The record of each guardianship shall contain—

1. The name, surname, age, and domicile of the minor or incapacitated person, and the extent and limit of the guardianship when the incapacity has been judicially declared.

2. The name, surname, profession, and domicile of the guardian, and a statement as to whether he is a testamentary or legitimate guardian or was appointed by the court.

3. The date on which the guardianship was conferred, and the day on which the bond required of the guardian was given, stating, in a proper case, the kind of property in which it was constituted.

4. The allowance for support which may have been assigned the minor or incapacitated person or the statement that proceeds for support have been allowed.

ART. 291. At the foot of each record there shall be entered at the beginning of the judicial year whether the guardian has rendered an account of his administration, in case he is obliged to do so.

ART. 292. The judges shall examine these registries every year, and shall take the necessary steps in each case to protect the interests of the persons subject to guardianship.

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TITLE X.

THE FAMILY COUNCIL.

SECTION FIRST.—*Manner of constituting the family council.*

ART. 293. If the department of public prosecution or the municipal judge should have knowledge that in the territory under their jurisdiction there exists any of the persons referred to in article 200, the former shall request and the latter shall order, of his own motion, or at the instance of the public prosecutor, according to the cases, the constitution of a family council.

The following are obliged to advise the municipal judge of any act which gives rise to a guardianship, as soon as they have knowledge thereof: the testamentary guardian, the relatives called to the legitimate guardianship, and those who, according to law, are members of the council; being liable, should they not do so, to indemnify losses and damages.

The municipal judge shall cite the persons who are to compose the family council, informing them of the purpose of the meeting, and the day, hour, and place where it shall be held.

ART. 294. The family council shall be composed of the persons whom the father, or the mother, in a proper case, may have designated in the will, and, in the absence thereof, of the male ascendants and descendants, and of the brothers and husbands of the living sisters of the minor or incapacitated person, whatever their number may be. If it is less than five, this number shall be made up with the nearest male relatives of both the paternal and maternal lines; and, should there not be any or should they not be bound to form part of the council, the municipal judge shall appoint in their place honest persons, preferring the friends of the parents of the minor or incapacitated person.

Should there be no ascendants, descendants, brothers, or husbands of living sisters, the municipal judge shall form the council with the five nearest male relatives of the minor or incapacitated person, and, should there not be the full number of relatives, or any, he shall substitute them with honest persons, preferring always the friends of the parents.

ART. 295. In case of equal degree of relationship, preference shall be given in forming the family council to the oldest relative.

ART. 296. The courts may remedy the nullity which may arise by reason of the nonobservance of the preceding articles, if not due to fraud nor injuring the person or property of the person subject to guardianship, but correcting the error committed in the formation of the council.

ART. 297. The relatives of the minor or incapacitated person designated by law, who do not reside within a radius of 30 kilometers of the court having jurisdiction over the guardianship, shall not be forced to form part of the council; but they shall be members of the council

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if they voluntarily appear to accept the duty, for which purpose they must be cited by the municipal judge.

ART. 298. The causes which excuse, disqualify, and give rise to the removal of guardians and protutors are applicable to the members of the family council. Neither can the persons excluded in their wills from this duty by the father or by the mother, in a proper case, be members thereof.

ART. 299. The guardian and protutor can not be at the same time members of the family council.

ART. 300. The meeting for the formation of the family council shall be presided over by the municipal judge. The persons cited are obliged to appear in person or through a special attorney, who can never represent more than one person. Should they not appear, the judge may impose upon them a fine not to exceed 50 pesetas.

ART. 301. After the family council has been constituted by the municipal judge it shall proceed to prescribe all the measures necessary to take care of the person and property of the minor or incapacitated person and to constitute the guardianship.

ART. 302. The family council for natural children shall be constituted under the same rules as that for legitimate children, but appointing as members thereof the relatives of the father or mother who may have acknowledged them.

That of other illegitimate children shall be composed of the public prosecutor, who shall be the president, and four honest neighbors.

ART. 303. The administration of every charitable institution shall have over the orphans in the same who are minors all the powers corresponding to guardians and to the family council.

SECTION SECOND.—*Method of procedure by the family council.*

ART. 304. The member elected by the other members shall be the president of the council.

It is the duty of the president—

1. To call a meeting of the council whenever he considers it advisable, or at the request of the members, of the guardian, or of the protutor, and to preside over its deliberations.

2. To draft and to give the reasons for the resolutions, recording the opinion of each member, requiring said members to authenticate the minutes with their signatures.

3. To carry out the resolutions.

ART. 305. The family council shall not adopt resolutions on matters submitted to them unless three members at least are present.

Resolutions shall always be adopted by a majority of votes.

The vote of the president shall decide in case of a tie.

ART. 306. The members of the family council are obliged to attend the meetings of the same to which they may have been called. Should

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they not attend, nor give any legitimate excuse, the president of the council shall inform the municipal judge thereof, who may impose on them a fine not exceeding 50 pesetas.

ART. 307. No member of the family council shall attend its meetings, nor cast a vote, when a matter is in question in which he, his descendants, ascendants, or spouse has any interest, but he may be heard if the council deems it advisable.

ART. 308. The guardian and the protutor are obliged to attend the meetings of the family council whenever cited, but shall have no vote. They may also attend if the council meets at their request.

The person subject to guardianship has a right to attend and to be heard, provided he is over 14 years of age.

ART. 309. The family council shall take cognizance of matters of their competency, in accordance with the provisions of this code.

ART. 310. The members who may have dissented from the majority in voting on any resolution, as well as the guardian or protutor, or any relative of the minor or other person interested in the decision, with the exception of the case of article 242, may appeal to the judge of first instance.

ART. 311. At the conclusion of the guardianship, and the consequent dissolution of the family council, the latter shall deliver the minutes of its sessions to the person who was subject to guardianship, or to the person representing his rights.

ART. 312. The members of the family council are liable for the damages which the person subject to guardianship may suffer by reason of their malice or culpable negligence.

The members who may have dissented from the resolution causing the injury shall be exempted from this liability.

ART. 313. The family council shall be dissolved in the same cases in which the guardianship is extinguished.

TITLE XI.

Emancipation and majority.

CHAPTER FIRST.

Emancipation.

ART. 314. Emancipation takes place:

1. By the marriage of the minor.
2. By majority.
3. By concession of the father or mother exercising the parental authority.

ART. 315. Marriage produces legal emancipation with the limitations mentioned in article 59 and in rule 3 of article 50.

ART. 316. The emancipation, treated of in the third paragraph of article 314, shall be granted by a public instrument or by appearance

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before the municipal judge, which shall be recorded in the civil registry, and in the meantime shall have no effect with regard to third persons.

ART. 317. Emancipation qualifies the minor to control his person and property, as if of age; but, until he attains his majority, the person emancipated can not borrow money nor encumber or sell real property without the consent of his or her father, and, in the absence of the latter, that of the mother, and, in the absence of both, without that of a guardian. Neither can he nor she appear in court without the attendance of said persons.

ART. 318. In order that the emancipation may take place by concession of the father or of the mother, it shall be necessary that the minor be 18 years of age and consent thereto.

ART. 319. After the emancipation has been granted it can not be revoked.

CHAPTER SECOND.

Majority.

ART. 320. Majority commences on attaining 23 years of age.

A person of age is qualified for all acts of civil life, with the exceptions established by this code in special cases.

ART. 321. Notwithstanding the provisions of the foregoing article, unmarried daughters of age, but under 25 years, can not leave the parental home without permission of the father or mother in whose company they live, unless to marry or when the father or mother have contracted another marriage.

ART. 322. The orphaned minor may obtain the benefit of majority by concession of the family council with the approval of the presiding judge of the territorial audiencia of the district, after hearing the public prosecutor.

ART. 323. For the concession and approval mentioned in the preceding article it is necessary—

1. That the minor be over eighteen years of age.
2. That he or she consent to the qualification.
3. That it is considered advantageous to the minor.

The qualification shall be recorded in the registry of guardianships and in the civil registry.

ART. 324. The provisions of article 317 shall be applicable to the minor who has obtained the qualification of majority.

TITLE XII.

Registry of civil status.

ART. 325. Acts relating to the civil status of persons shall be recorded in the registry devoted to that purpose.

ART. 326. The registry of civil status shall include the records or

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entries of births, marriages, emancipations, acknowledgments and legitimations, deaths, naturalizations, and residences, and shall be in charge of the municipal judges or other officials of the civil order in Spain, and of consular or diplomatic agents in foreign countries.

ART. 327. The records in the registry shall be evidence of the civil status, and any other evidence can be admitted only when such records have never existed or the books of the registry should have disappeared or when a litigation is instituted before the courts.

ART. 328. It shall not be necessary that a newly born child be presented to the official in charge of the registry for the record of birth, the statement of the person obliged to make it being sufficient. This statement shall include all the conditions required by law and shall be signed by its author or by two witnesses, at his request, should he not be able to do so.

ART. 329. In canonical marriages it shall be the obligation of the contracting parties to furnish the official representing the State who attends the ceremony all the data required for its record in the civil registry. Those referring to banns, impediments, and their disposition are excepted and not required to be entered in the registry.

ART. 330. Naturalizations shall have no legal effects whatsoever until they are entered in the registry, whatever may be the evidence proving them and the date on which they have been granted.

Art. 331. Municipal judges and those of first instance, in a proper case, may punish the violations of the provisions relating to the civil registry, when they do not constitute a crime or offense, with a fine of 20 to 100 pesetas.

Art. 332. The law of June 17, 1870, shall continue in force in so far as not modified by the preceding articles.

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BOOK SECOND.

PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS.

TITLE I.

Classification of property.

PRELIMINARY PROVISION.

ART. 333. All things which are or may be the subject of appropriation are considered either as personal or real property.

CHAPTER FIRST.

Real property.

ART. 334. Real property consists of—

1. Lands, buildings, roads, and constructions of all kinds adherent to the soil.

2. Trees and plants and ungathered products while they are not separated from the land and form an integral part of the real property.

3. All that is attached to real property in a fixed manner, so that it can not be separated therefrom without breaking the matter or injuring the object.

4. Statues, reliefs, paintings, or other useful or ornamental objects placed in buildings or on lands by the owner of the real estate in such a manner as to show the intention of attaching them permanently to the estate.

5. Machinery, vessels, instruments, or utensils, destined by the owner of the estate to the industry or work he may carry on in a building or estate and which are directly required to satisfy the necessities of the said work.

6. Vivaries for animals, pigeon houses, beehives, fish ponds, or beds for similar purposes, when the owner has placed or preserves them for the purpose of keeping the same attached to the estate and forming a permanent part thereof.

7. Manure destined to the cultivation of an estate, when it is on the ground in which it is to be employed.

8. Mines, quarries, and dumps, while attached to the soil, and running or stagnant waters.

9. Docks and constructions, even though floating, the purpose and conditions of which are to remain at a fixed place in a river, lake, or on a coast.

10. Administrative concessions for public works, and easements, and other property rights in real estate.

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CHAPTER SECOND.

Personal property.

ART. 335. Personal property is considered anything susceptible of appropriation and not included in the foregoing chapter, and, in general, all that which can be carried from one place to another without damage to the real estate to which it may be attached.

ART. 336. Incomes or pensions, either for life or hereditary, in favor of a person or family, provided they do not encumber real estate with a property lien, as well as alienated offices, contracts for public services, and mortgage loan bonds or certificates are also personal property.

ART. 337. Personal property is either consumable (*fungibles*) or nonconsumable (*no fungibles*).

To the first class belongs that which can not be made use of, by reason of its nature, without consuming it; all other personal property belongs to the second class.

CHAPTER THIRD.

Property with regard to ownership.

ART. 338. Property is of public or private ownership.

ART. 339. Property of public ownership is—

1. That destined to the public use, such as roads, canals, rivers, torrents, ports, and bridges constructed by the State, and banks, shores, roadsteads, and that of a similar character.

2. That belonging exclusively to the State without being for public use and which is destined to some public service, or to the development of the national wealth, such as walls, fortresses, and other works for the defense of the territory, and mines, until their concession has been granted.

ART. 340. All other property belonging to the State which has not the conditions stated in the preceding article is considered as private property.

ART. 341. Property of public ownership, when no longer devoted to general uses or to the requirements of the defense of the territory, shall become a part of the State property.

ART. 342. Property of the royal patrimony is governed by its special law, and in what is not provided for therein by the general provisions established by this code regarding private property.

ART. 343. The property of provinces and of towns is divided into property for public use and patrimonial property.

ART. 344. Property for public use in provinces and in towns comprises the provincial and town roads, the squares, streets, fountains, and public waters, the promenades, and public works of general service supported by the said towns or provinces.

All other property possessed by either is patrimonial, and shall be governed by the provisions of this code, unless otherwise prescribed in special laws.

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ART. 345. Besides the patrimonial property of the State, of provinces, and of municipalities, that belonging to private parties, individually or collectively, is property of private ownership.

PROVISIONS COMMON TO THE THREE PRECEDING CHAPTERS.

ART. 346. Whenever by provision of law or by an individual declaration the expression real property or personal property is used, there shall be understood as included in the same, respectively, that enumerated in chapter first and in chapter second.

Whenever the word furniture (*muebles*) alone is used there shall not be understood as included therein money, credits, commercial securities, bonds, jewels, scientific or artistic collections, books, medals, arms, clothing, horses or carriages and their accessories, grain, liquids (*caldos*), and merchandise or other things, the principal use of which is not to furnish or ornament residences, with the exception of the case in which, by the context of the law or of the individual provision, the contrary clearly appears.

ART. 347. Whenever, in a sale, legacy, or gift or any other provision in which reference is made to personal or real property, its possession or ownership is transferred with everything it may include, there shall not be understood as comprised in the transfer money, bonds, credits, and actions, the titles to which are contained in the thing transferred, unless the intention of including such securities and rights in the transfer is obvious.

TITLE II.

Ownership.

CHAPTER FIRST.

Ownership in general.

ART. 348. Ownership is the right to enjoy and dispose of a thing, without further limitations than those established by law.

The owner has a right of action against the holder and the possessor of the thing to recover the same.

ART. 349. No one shall be deprived of his property, except by competent authority and with sufficient cause of public utility, always after the proper indemnity.

If this requisite has not been fulfilled the judges shall protect, and in a proper case, replace the condemned party in possession.

ART. 350. The owner of land is the owner of its surface and of what is under it, and he may establish thereon the works, plantations, and excavations which he may desire, reserving the easements, and subject to the provisions of the mining and water laws and of the police regulations.

ART. 351. Hidden treasure belongs to the owner of the land on which it is found.

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However, when the discovery is made on property belonging to another or to the State, and by chance, one-half thereof shall be awarded the finder.

If the goods discovered are of interest to the sciences or arts, the State may acquire them at their just value, which shall be divided as prescribed.

ART. 352. By "treasure" is understood, for legal purposes, hidden or unknown deposits of money, jewelry, or other precious objects, the legal ownership of which does not appear.

CHAPTER SECOND.

Right of accession.

GENERAL PROVISION.

ART. 353. Ownership of property gives a right by accession to all that is produced thereby or which is united to or incorporated therein naturally or artificially.

SECTION FIRST.—*Right of accession with regard to the production of property.*

ART. 354. The following belong to the owner:

1. Natural fruits.
2. Industrial fruits.
3. Civil fruits.

ART. 355. Natural fruits are the spontaneous products of the soil, and the brood and all other produce of animals.

Industrial fruits are those produced by land of any kind by reason of cultivation or labor.

Civil fruits are rents of buildings, proceeds from leases of lands, and the amount of perpetual life, or other similar incomes.

ART. 356. The receiver of fruits is obliged to pay the expenses incurred by a third party in their production, gathering, and preservation.

ART. 357. Fruits which are in sight or appearing are considered natural or industrial.

With regard to animals, it is sufficient if they are in the womb of the mother, though unborn.

SECTION SECOND.—*Rights of accession with regard to real property.*

ART. 358. Whatever is constructed, planted, or sown on another's property, and the improvements or repairs made thereon, belongs to the owner of the same, subject to the provisions contained in the following articles.

ART. 359. All works, sown grounds, and plantings are presumed to be made by the owner and at his expense, unless the contrary is proven.

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ART. 360. The owner of the soil who shall make thereon, in person or through another, plantings, constructions, or works, with material belonging to another person, is obliged to pay their value; and should he have acted in bad faith he shall, furthermore, be obliged to indemnify for loss and damage. The owner of the material shall have a right to remove it only in case he can do so without injury to the work constructed or without destroying the plantings, constructions, and work done.

ART. 361. The owner of the land on which building, sowing, or planting is done in good faith shall have a right to appropriate as his own the work, sowing, or planting after the indemnity mentioned in Arts. 453 and 454, or, to oblige the person who has built or planted, to pay to him the value of the land and to force the person who sowed to pay the proper rent.

ART. 362. He who builds, plants, or sows in bad faith on another's land loses what he has built, planted, or sown, without right to indemnity.

ART. 363. The owner of the land on which anyone has built, planted, or sown in bad faith may demand the demolition of the work or the removal of the planting or sowing and the restoring of everything to its original condition at the expense of the person who built, planted, or sowed.

ART. 364. When there has been bad faith, not only on the part of the person who built, sowed, or planted on another's land, but also on the part of the owner of the latter, the rights of both shall be the same as if they had acted in good faith.

Bad faith on the part of the owner is understood whenever the act has been executed in his presence with his knowledge and tolerance and without objection.

ART. 365. If the material, plants, or seed belong to a third person, who has not acted in bad faith, the owner of the land shall be liable subsidiarily for their value, but only in case the person who used them has no means to pay therefor.

This provision shall not be applicable if the owner makes use of the rights granted him by Art. 363.

ART. 366. The accretions which banks of rivers may gradually receive from the effects of the currents belong to the owners of the estates bordering thereon.

ART. 367. The owners of estates bordering on ponds or lakes do not acquire the land left dry by the natural decrease of waters, nor lose those inundated in extraordinary floods.

ART. 368. When the current of a river, creek, or torrent detaches from an estate fronting thereon a known portion of land and transfers it to another estate, the owner of the estate to which the detached part belongs retains the ownership thereof.

ART. 369. Trees uprooted and carried away by currents of waters

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belong to the owner of the land upon which they are carried, if the former owners do not claim them within one month. If the latter claim them, they must pay all the expenses caused by their collection or security in a safe place.

ART. 370. The beds of rivers which remain abandoned because the course of the water has naturally changed belong to the owners of the riparian lands throughout their respective lengths. If the abandoned bed divided estates belonging to different owners, the new dividing line shall run at equal distance therefrom.

ART. 371. Islands which may form in the waters adjacent to the coast of Spain and in navigable rivers belong to the State.

ART. 372. When in a navigable river, which changes its course by natural causes, a new bed is opened through a private estate, this bed shall be of public ownership. The owner of the estate shall recover it if the waters leave it again dry naturally or through works legally authorized for the purpose.

ART. 373. Islands which, through successive deposits in layers of descending alluviums, form themselves in rivers belong to the owners of the banks or shores nearest to each of them, or to those of both shores if the island is in the middle of the river, being then divided longitudinally in halves. If an island thus formed be farther from one bank than from the other, the owner of the nearest bank shall be the sole owner of the same.

ART. 374. When the current of a river runs into branches, leaving an estate or part thereof isolated, the owner of the same retains his ownership. He also retains it if a portion of the land is detached by the current.

SECTION THIRD.—*Right of accession with regard to personal property.*

ART. 375. When two articles of personal property belonging to different persons are united in such manner as to form a single object, without being attended by bad faith, the owner of the principal article shall acquire the accessory one upon indemnifying its former owner for its value.

ART. 376. When two things are incorporated, the principal one shall be considered that to which the other has been united as an ornament or for its use and perfection.

ART. 377. If it be not possible to determine by the preceding rule which of the two incorporated articles is the principal one, that of the greater value shall be considered as such; and between two articles of equal value, that of the greater volume.

In paintings and sculpture, in writings, printed matter, prints, engravings, and lithographs, the board, metal, stone, canvas, paper, or the parchment shall be considered as accessories.

ART. 378. When articles united can be separated without injury, their respective owners may demand that they be separated.

However, when the article united for the use, embellishment, or

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perfection of the other is much more precious than the principal one, the owner of the former may demand its separation, even though the article to which it is united may suffer thereby.

ART. 379. When the owner of the accessory thing has united it in bad faith, he shall lose the article incorporated and shall be obliged to indemnify the owner of the principal one for the damages he may have suffered.

When the person who acted in bad faith is the owner of the principal thing, the owner of the accessory one shall have the right to choose between being paid by the former for the value thereof or to have that belonging to him separated, even though it be necessary for such purpose to destroy the principal one, and furthermore, in either case he shall be entitled to indemnity for loss and damage.

If any of the owners has made the incorporation with the knowledge and tolerance and without objection from the other, their respective rights shall be determined in the manner provided for such cases where both acted in good faith.

ART. 380. Whenever the owner of the material used without his consent is entitled to indemnity, he may demand that such indemnity consist in the delivery to him either of material equal in quality and value in all respects to that employed or the price thereof according to an expert appraisement.

ART. 381. If by the will of their owners, two things of identical or different kinds are mixed, or if the mixture occurs accidentally, and if in the latter case can not be separated without injury, each owner shall acquire a right in proportion to the part belonging to him according to the value of the things mixed or confounded.

ART. 382. If by the will of only one of the owners, but in good faith, two things of identical or different kinds are mixed or confounded, the rights of the owners shall be determined by the provisions contained in the preceding article.

If the person making the mixture or confusion acted in bad faith, he shall lose the thing belonging to him mixed or confounded, besides being obliged to indemnify the owner of the thing with which he made the mixture for the losses caused thereby.

ART. 383. The person who, in good faith, made use wholly or partially of material belonging to another party in making a work of a new kind, may make the work his own upon indemnifying the owner of the material for the value thereof.

If the latter is more precious than the work in which it is used, or more valuable, the owner thereof may at his option retain the new thing by paying the price of the work or may claim indemnity for the material.

If in the making of the new work there was bad faith, the owner of the material has a right to retain possession of the work without paying anything to the author, or to claim an indemnity for the value of the material and the losses he may have suffered.

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CHAPTER THIRD.

Surveys and demarcations.

ART. 384. Every owner has the right to fix the boundaries of his property by notifying the owners of adjoining estates thereof.

Those having property rights enjoy the same privilege.

ART. 385. The survey shall be made in accordance with the titles of each owner, and, in the absence of sufficient title, from what may appear from the possession held by the contiguous owners.

ART. 386. If the titles do not fix the boundary or area of each owner, and the question can not be decided by the possession or by other means of proof, the demarcation shall be made by dividing the land in dispute in equal parts.

ART. 387. If the titles of the contiguous owners show a larger or smaller area than that comprised in the total of said land the excess or lack shall be divided in proportion.

CHAPTER FOURTH.

Right of inclosing agricultural property.

ART. 388. Every owner may inclose or fence in his estates by means of walls, ditches, growing or dead hedges, or in any other manner whatsoever without injury to the easements existing thereon.

CHAPTER FIFTH.

Unstable buildings and trees about to fall.

ART. 389. If a building, wall, column or any other construction is in danger of falling, the owner shall be obliged to demolish it or to construct such props as may be necessary to prevent its fall.

Should the owner of the unstable work not do so, the authorities may order it demolished at his expense.

ART. 390. When a large tree threatens to fall in such a manner as to cause damage to the estate of another or to travelers on a public or private thoroughfare, the owner of the tree shall be obliged to uproot it and take it away, and should he not do so it shall be done at his expense by order of the authorities.

ART. 391. In the cases of the two foregoing articles, if the tree or building falls, the provisions of articles 1907 and 1908 shall be observed.

TITLE III.

Community of property.

ART. 392. There is community of property when the ownership of a thing or right belongs to different persons undividedly.

In the absence of contracts or of special provisions, ownership in common shall be governed by the provisions of this title.

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ART. 393. The share of the participants in the benefits, as well as in the charges, shall be in proportion to their respective interests.

The interests belonging to the coowners shall be presumed equal until the contrary is proven.

ART. 394. Each coowner may use the things owned in common, provided he uses them in accordance with their object and in such manner as not to injure the interests of the community nor prevent the coowners from utilizing them according to their rights.

ART. 395. Every coowner shall have a right to oblige the participants to contribute to the cost of keeping the thing or right held in common. Only the party renouncing his share in the ownership can exempt himself from this obligation.

ART. 396. When the different stories of a house belong to different owners, if the titles of ownership do not specify the manner in which they must contribute to the necessary work, and there is no agreement thereon, the following rules shall be observed:

1. The main and party walls, the roof, and other things used in common shall be in charge of all the coowners in proportion to the value of their stories.

2. Every owner shall pay the cost of maintaining the floor of his story. The expenses connected with the floor of the porch, front door, common yard, and hygienic works, common to all, shall be borne *pro rata* by all the owners.

3. The stairs from the portal to the first story shall be maintained at the expense *pro rata* of all the owners, with the exception of the owner of the ground floor; the stairs leading from the first to the second story shall be maintained at the expense of all, excepting the owners of the ground floor and first story, and so on successively.

ART. 397. None of the joint owners shall, without the consent of the others, make any change in the common property, even though they should be attended with advantageous results for all.

ART. 398. The decision of a majority of the coowners as to the management and better enjoyment of the thing owned in common shall be obligatory.

There shall be no majority, unless the resolution has been adopted by the coowners representing a majority of the interests which constitute the object of the community.

Should there be no majority, or the resolution of the latter is seriously prejudicial to the parties interested in the thing owned in common, the judge, at the instance of a party, shall decree what may be proper, including the appointment of an administrator.

When a part of the thing privately belongs to one or more of the part owners and the other part is owned in common, the foregoing provision shall be applicable to the latter only.

ART. 399. Every coowner shall have full ownership of his part and in the fruits and benefits derived therefrom, and he therefore may alienate,

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assign, or mortgage it, and even substitute another person in its enjoyment, unless personal rights are in question. But the effect of the alienation or mortgage, with regard to the coowners, shall be limited to the share which may be awarded him in the division on the dissolution of the community.

ART. 400. No coowner shall be obliged to remain a party to the community. Each of them may ask at any time the division of the thing owned in common.

Nevertheless an agreement to keep the thing undivided for a specified length of time, not exceeding ten years, shall be valid. This period may be extended by a new agreement.

ART. 401. Notwithstanding the provisions contained in the preceding article, the coowners can not demand a division of the thing owned in common to be made when by so doing they may render it unserviceable for the use to which it was destined.

ART. 402. The division of a thing owned in common may be made by the parties in interest or by arbitrators or friendly compromisers, appointed at the will of the coowners.

In case the division is made by arbitrators or compromisers, they shall divide it into parts in proportion to the rights of each coowner, avoiding payments of balances in cash in so far as possible.

ART. 403. The creditors or assignees of the co-owners may concur in the division of the thing owned in common, and object to any division made without their concurrence. But they can not oppose a division already made, except in case of fraud or when it has been made, despite the formal protest made to prevent it, and reserving always the rights of the debtor or assignee to maintain its validity.

ART. 404. If the thing is essentially undividable and the co-owners should not agree that it be awarded to one of them who shall indemnify the others, it shall be sold and the proceeds distributed.

ART. 405. The division of property held in common shall not prejudice a third person, who shall retain the rights of mortgage, easements, or any other property rights which may have belonged to him before the division was made. The personal rights of a third person against the community shall also remain in force, notwithstanding the division.

ART. 406. The rules relating to the division of an estate shall be applicable to the divisions among the co-owners.

TITLE IV.

Some special properties.

CHAPTER FIRST.

Waters.

SECTION FIRST.—*Ownership of waters.*

ART. 407. The following are of public ownership:

1. Rivers and their natural beds.

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2. Continuous or intermittent waters from springs or brooks running in their natural beds and the said beds.

3. Waters rising continuously or intermittently in lands of said public ownership.

4. Lakes and ponds formed by nature on public lands and their beds.

5. Rain waters running through ravines or sandy beaches, the beds of which shall also be public property.

6. Subterranean waters on public lands.

7. Waters found within the zone of operation of public works, even when they are made by a concessionnaire.

8. Waters flowing continuously or intermittently on estates belonging to private parties, to the State, to provinces, or to towns from the moment they leave said estates.

9. The overflow of fountains, sewers, and public institutions.

ART. 408. The following are of private ownership:

1. Waters, either continuous or intermittent, rising on private estates as far as they run through them.

2. Lakes and ponds and their beds when formed by nature on said estates.

3. Subterranean waters found on the same.

4. Rain waters falling thereon as long as they remain within their boundaries.

5. The beds of flowing waters, continuous or intermittent, formed by rain water, and those of brooks crossing estates which are not public property.

In every drain or aqueduct the water, the bed, the sloping bank, and the side ways are considered as an integral part of the estate or building to which the waters are destined. The owners of estates through or along the boundaries of which the aqueduct passes can allege no ownership over it, nor any right to make use of its bed or side ways, unless they base their claim on title deeds specifying the right or the ownership claimed.

SECTION SECOND.—*Use of public waters.*

ART. 409. The use of public waters is acquired—

1. By administrative concession.

2. By prescription of twenty years.

The limits of the rights and obligations of these uses shall be those appearing, in the first case, from the terms of the concession; and, in the second, from the manner and form in which the waters have been used.

ART. 410. Every concession of use of waters is understood without prejudice to third parties.

ART. 411. The right to make use of public waters is extinguished by the forfeiture of the concession, and by nonuser for twenty years.

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SECTION THIRD.—*Use of waters of private ownership.*

ART. 412. The owner of an estate containing a spring or the source of a brook, continuous or intermittent, may use its waters as far as they run through the estate; but the overflow is public and the use thereof is governed by the special law of waters.

ART. 413. Private ownership of the beds of rain waters does not give a right to make works and constructions which may divert their course to the prejudice of a third party, nor those the destruction of which by the force of floods, may cause such deviation.

ART. 414. No one may enter private property in search of waters or make use of them without permission from their owners.

ART. 415. The ownership which the proprietor of an estate has in the waters rising on the same can not prejudice the rights which the owners of lower estates may have legally acquired to their use.

ART. 416. Every owner of an estate has a right to construct on his property receptacles for rain water, provided he does not prejudice the public or a third party thereby.

SECTION FOURTH.—*Subterranean waters.*

ART. 417. Only the owner of an estate or another person with his permission, may search for subterranean waters thereon.

The search for subterranean water on lands of public ownership can only be made with the permission of an administrative authority.

ART. 418. Artesian waters, according to the special law of waters, belong to the persons who discover the same.

ART. 419. When the owner of artesian waters abandons the same to their natural course, they shall be public property.

SECTION FOURTH.—*General provisions.*

ART. 420. The owner of an estate on which there are defensive works to check waters, or on which, by reason of the variation of their course, it should be necessary to reconstruct them, is bound, at his option, to make the necessary repairs or constructions or to permit that, without injury to him, they be made by the owners of the estates who suffer or are clearly exposed to suffer damage.

ART. 421. The provisions contained in the preceding article are applicable to the cases in which it may be necessary to clear an estate from the material, the accumulation, or fall of which may obstruct the course of waters with injury or danger to a third party.

ART. 422. All the owners who participate in the benefits arising from the works, referred to in the two foregoing articles, are obliged to contribute to the cost of their construction in proportion to their interest. Those who by their own fault may have caused the damage shall be liable for the expenses.

ART. 423. The ownership and use of waters belonging to corporations or private parties are subject to the law of eminent domain.

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ART. 424. The provisions of this title shall not prejudice the rights previously acquired nor the private ownership which the owners of waters, drains, fountains, or springs have to use, sell, or exchange them as private property.

ART. 425. In all that is not expressly determined by the provisions of this chapter the special law of waters shall be observed.

CHAPTER SECOND.

Minerals.

ART. 426. Any Spaniard or foreigner may, unrestrictedly, make prospect pits or excavations not exceeding ten meters in length or depth for the purpose of discovering minerals on land of public ownership, but they must previously give notice thereof to the local authorities. On land of private ownership no prospect pits can be sunk without the previous permission of the owner or of the person representing him.

ART. 427. The limits of the right mentioned in the foregoing article, the previous formalities, and the conditions for their exercise, the designation of the substances which are to be considered as minerals, and the determination of the rights of the owner of the land and of the discoverer of the minerals in case of concessions, shall be governed by the special mining law.

CHAPTER THIRD.

Intellectual property.

ART. 428. The author of any literary, scientific, or artistic work has the right to profit by it and dispose of it at will.

ART. 429. The law of intellectual property determines the persons to whom such right belongs, the manner of exercising it, and the period of its duration. In cases not provided for nor decided by said special law, the general rules on ownership established in this code shall be observed.

TITLE V.

Possession.

CHAPTER FIRST.

Possession and its kinds.

ART. 430. Natural possession is the holding of a thing or the enjoyment of a right by a person. Civil possession is the same holding or enjoyment, together with the intention of acquiring ownership of the thing or right.

ART. 431. Possession of things or rights is exercised either by the same person who holds and enjoys them or by another in his name.

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ART. 432. Possession of things and rights may be held in one of two different ways—either as an owner, or as a holder of the things or rights to keep or enjoy them, the ownership belonging to another person.

ART. 433. Any person who is not aware that there is in his title or in the manner of acquiring it any flaw invalidating the same shall be considered a possessor in good faith.

Possessors aware thereof are considered possessors in bad faith.

ART. 434. Good faith is always presumed, and any person alleging bad faith on the part of the possessor is obliged to prove it.

ART. 435. Possession acquired in good faith does not lose this character, except in the case and from the moment some act exists proving that the possessor is aware that he possesses the thing illegally.

ART. 436. It is presumed that the possession is still enjoyed in the manner in which it was acquired until the contrary is proven.

ART. 437. Only things and rights capable of being appropriated can be the object of the possession.

CHAPTER SECOND.

Acquisition of possession.

ART. 438. Possession is acquired by the material occupancy of the thing or right possessed, or by the fact that the latter remains subject to the action of our will, or by the proper legal steps and formalities established for acquiring such rights.

ART. 439. Possession may be acquired by the same person who is to enjoy it, by his legal representative, by his agent, or by a third person, without any mandate whatsoever, but in the last case possession shall not be considered as acquired until the person in whose name the instrument of possession has been executed has ratified the same.

ART. 440. The possession of hereditary property is understood as transferred to the heir without interruption and from the instant of the death of the testator, in case the inheritance be accepted.

A person who repudiates an inheritance in a valid manner is understood as not having ever possessed it.

ART. 441. In no case can possession be forcibly acquired while there is a possessor opposing it. A person believing that he has an action or right to deprive another of the holding of a thing must request the assistance of the competent authority whenever the holder refuses the delivery.

ART. 442. A person succeeding by an hereditary title shall not suffer the consequences of a faulty possession of the testator, unless it is proven that he had knowledge of the defects affecting it; but the effects of the possession in good faith shall benefit him only from the date of the death of the testator.

ART. 443. Minors and incapacitated persons may acquire the possession of things; but they shall require the assistance of their legal

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representatives to make use of the rights in their favor arising from possession.

ART. 444. Acts which are merely tolerated and those clandestinely executed, without knowledge of the possessor of a thing, or by force, do not affect the possession.

ART. 445. Possession, as a fact, can not be recognized in two different personalities, except in cases where there is no division. Should a question arise as to the fact of the possession, the actual possessor shall be preferred; when there are two, the oldest shall be preferred; if the dates of the possession are the same, the one presenting a title; and if all these conditions are equal, the thing shall be placed in deposit or judicial keeping until the possession or ownership thereof is decided in the proper manner.

CHAPTER THIRD.

Effects of possession.

ART. 446. Every possessor has a right to be respected in his possession; and should he be disturbed therein, he must be protected or possession must be restored to him by the means established in the laws of procedure.

ART. 447. Only the possession acquired and enjoyed by virtue of ownership can serve as a title to acquire it.

ART. 448. The possessor by virtue of ownership has in his favor the legal presumption that he holds possession by reason of a sufficient title and he can not be forced to show it.

ART. 449. The possession of real estate is also a presumption of possession of the furniture and objects contained therein unless it is shown or proven that they should be excluded.

ART. 450. Each one of the participants in a thing possessed in common is considered as having exclusively possessed the part which may be allotted to him on the distribution for the entire period during which there is no division. Interruption in possession of the whole or a part of a thing held in common shall affect all possessors equally.

ART. 451. The fruits collected in good faith by a possessor during the time the possession is not legally interrupted become his own.

Natural and industrial fruits are understood as collected from the moment they are gathered or harvested.

Civil fruits are considered as daily proceeds and belong to the possessor in good faith in this proportion.

ART. 452. If, at the date on which good faith ceases, some natural or industrial fruits are ungathered, the possessor shall have a right to recover the expenses he may have incurred in their production, and furthermore, to a part of the net proceeds of the crop in proportion to the time of his possession.

The expenses shall be distributed pro rata, in the same manner, between the two possessors.

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The owner of a thing may, if he desires, grant to the possessor, in good faith, the right to finish the cultivation and collection of the growing fruits as an indemnity for the part of the cost of cultivation and net proceeds belonging to him; the possessor in good faith, who, for any reason whatsoever may not desire to accept this concession, shall lose the right to be indemnified in any other manner.

ART. 453. Necessary expenses are refunded to every possessor, but only the possessor in good faith may retain the thing until they are repaid to him.

Useful expenses are paid the possessor in good faith with the same right of retention, the person who has defeated him in his possession having the option of refunding the amount of the expenses or paying him the increase in value the thing has acquired by reason thereof.

ART. 454. The expenses purely for luxury or mere pleasure are not repaid the possessor in good faith; but he may remove the ornaments with which he has embellished the principal thing if it does not suffer injury thereby and if the successor in the possession does not prefer to refund the amount expended.

ART. 455. A possessor in bad faith shall pay for the fruits collected, and for those which the legitimate possessor could have received, and shall only have a right to be reimbursed for the necessary expenses incurred for the preservation of the thing. The expenses incurred in improvements for luxury and pleasure shall not be repaid the possessor in bad faith; but the latter may remove the object for which such expenses have been incurred, provided the thing suffers no damage and the legitimate possessor does not prefer to retain them, and paying the value they may have at the time of taking possession.

ART. 456. The improvements arising from nature or time always redound to the benefit of the person who has gained the possession.

ART. 457. A possessor in good faith is not liable for the deterioration or loss of the thing possessed, with the exception of the cases in which it is proved that he has acted with fraudulent intent. A possessor in bad faith is liable for the deterioration or loss in any case, even in those caused by force majeure, when he has maliciously delayed the delivery of the thing to its legitimate possessor.

ART. 458. The person obtaining possession is not bound to pay for improvements which have ceased to exist at the time of the acquisition of the thing.

ART. 459. The actual possessor who shows his possession at a prior period is presumed to have had possession also during the intermediate period, until the contrary is proven.

ART. 460. The possessor may lose his possession—

1. By the abandonment of the thing.
2. By transfer to another for a good or valuable consideration.
3. By the destruction or total loss of the thing or by the thing becoming unmarketable.

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4. By the possession of another, even against the will of the former possessor, if the new possession has lasted more than one year.

ART. 461. The possession of personal property is not considered lost while it is under the control of the possessor, even though the latter may accidentally not know its whereabouts.

ART. 462. The possession of real property and property rights is not considered lost, nor transferred for the purposes of prescription to the prejudice of a third person, except in accordance with the provisions of the mortgage law.

ART. 463. Instruments relating to possession, either executed or admitted by the person possessing another's thing as a mere holder for its enjoyment or retention for any reason, does not bind nor prejudice the owner, unless the latter should have granted to the former express powers to execute them or unless he ratifies them subsequently.

ART. 464. The possession of personal property, acquired in good faith, is equivalent to a title thereto. However, the person who has lost personal property or has been illegally deprived thereof may recover it from whoever possesses it.

If the possessor of personal property, lost or stolen, has acquired it in good faith at a public sale, the owner can not recover it without reimbursing the price paid therefor.

Neither can the owner of things pledged in pawn shops, established with the authorization of the Government, recover them, whosoever may be the person who pledged them, without previously refunding to the institution the amount of the pledge and the interest due.

With regard to things acquired on exchange, or at fairs or markets or from a merchant legally established and usually employed in similar dealings, the provisions of the code of commerce shall be observed.

ART. 465. Wild animals are only possessed while they are under one's control; domestic or tame ones are considered as tame or domestic if they are accustomed to return to the home of their possessor.

ART. 466. A person who recovers the possession, according to law, which was improperly lost, is considered as having enjoyed it without interruption, for all the purposes which may redound to his benefit.

TITLE VI.

Usufruct, use, and occupancy.

CHAPTER FIRST.

Usufruct.

SECTION FIRST.—*Usufruct in general.*

ART. 467. Usufruct gives a right to enjoy another's property under the obligation of preserving its form and substance unless the instrument creating it or the law otherwise permits.

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ART. 468. Usufruct is constituted by law by the wish of private persons expressed in instruments, *inter vivos*, or by last will, and by prescription.

ART. 469. Usufruct can be created on the whole or on part of the fruits of a thing, in favor of one or more persons, simultaneously or successively, and in any case from or to a certain day, conditionally or unconditionally. It may also be created on a right, provided the same is not absolutely personal or not transferable.

ART. 470. The rights and duties of the usufructuaries shall be those fixed in the instrument creating the usufruct; in its absence, or if the latter is not sufficient, the provisions contained in the two following sections shall be observed.

SECTION SECOND.—*Rights of the usufructuary.*

ART. 471. The usufructuary shall be entitled to receive all the natural, industrial, and civil fruits of the property in usufruct. With regard to the treasures which may be found on the estate, he shall be deemed a stranger.

ART. 472. The natural or industrial fruits, growing at the time of the beginning of the usufruct, belong to the usufructuary.

Those growing at the time the usufruct expires, belong to the owner.

In the preceding cases, the usufructuary, at the beginning of the usufruct, is not bound to pay to the owner any of the expenses incurred; but the owner is bound to defray from the proceeds of the growing fruits, at the expiration of the usufruct, the ordinary cost of cultivation, sowing, and other similar expenses incurred by the usufructuary.

The provisions of this article shall not prejudice the rights of a third person, acquired at the beginning or expiration of the usufruct.

ART. 473. If the usufructuary has leased the lands or estates given in usufruct, and the latter should expire before the lease, he or his heirs and successors shall only receive the proportionate part of the rent, to be paid by the lessee.

ART. 474. The civil fruits are understood to be paid day by day, and belong to the usufructuary in proportion to the time the usufruct may last.

ART. 475. When a usufruct is created on the right to collect a rent or a periodical pension, either in money or in fruits, or in interest on obligations, or certificates payable to bearer, each payment due shall be considered as proceeds or fruits of said right.

When it consists in the enjoyment of the benefits arising from an interest in any industrial or commercial enterprise, the distribution of which is not to take place at a definite date, such benefits shall have the same consideration.

In either case, they shall be distributed as civil fruits and shall be applied in the manner prescribed in the foregoing article.

ART. 476. The usufructuary of an estate containing mines is not entitled to the proceeds of those denounced, granted, or which are being

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worked at the beginning of the usufruct, unless they are expressly granted to him by the instrument creating the latter or if it be universal.

The usufructuary, however, may remove stones, lime, and chalk from the quarries for repairs, or works which he may be obliged to make or which may be necessary.

ART. 477. Notwithstanding the provisions of the foregoing article, the usufructuary, in a legal usufruct, may work the mines denounced, granted, or which are being worked contained in the estate, retaining one-half of the proceeds which may be obtained after deducting the expenses, which he shall equally share with the owner.

ART. 478. The status of a usufructuary does not deprive the person possessing it of the right granted to everyone by the mining law to denounce and obtain the concession of mines existing on the estate in usufruct in the form and under the conditions established by said law.

ART. 479. The usufructuary shall have a right to enjoy the increase which the thing in usufruct may receive by accretion, as well as the easements existing in its favor, and in general all the benefits inherent thereto.

ART. 480. The usufructuary may personally enjoy the thing in usufruct, lease it to another person, or alienate his right to the usufruct, even for a good consideration; but all the contracts he may make as such usufructuary shall terminate at the expiration of the usufruct, except the lease of rural estates, which shall be considered in force during the agricultural year.

ART. 481. When the usufruct includes things which, without being destroyed, gradually deteriorate by use, the usufructuary shall have a right to make use of them in accordance with the purpose they are to serve, and shall not be obliged to return them at the expiration of the usufruct, except in their condition at that time; but he shall be obliged to indemnify the owner for the deterioration they may have suffered by reason of his fraud or neglect.

ART. 482. When the usufruct includes things which can not be used without being consumed, the usufructuary shall have a right to make use of them under the obligation of paying their appraised value on the expiration of the usufruct, if they were appraised when given to him. When they have not been appraised, he shall have the right to return them by giving the same quantity and quality or paying their current value at the time of the expiration of the usufruct.

ART. 483. The usufructuary of vineyards, olive orchards, or other trees or shrubs may make use of dead trunks and even of those cut or torn off by accident, under the obligation of replacing them by others.

ART. 484. If in consequence of an accident or extraordinary event the vines, olive trees, or other trees or shrubs should have disappeared in such a considerable number that the replanting of them should be impossible, or too onerous, the usufructuary may leave the dead, fallen, or broken trunks at the disposal of the owner and oblige him to remove them and clear the land.

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ART. 485. The usufructuary of woodland shall enjoy all the profits which the latter may produce according to its character.

If the woodland is a copse or of timber for building, the usufructuary may do ordinary cutting or felling, such as the owner may have been in the habit of doing, and should the latter not have done so he shall make them in accordance with the usage of the place as to manner, amount, and season.

In any case the cutting or felling of trees shall be done in such manner that it will not injure the preservation of the estate.

In nurseries of trees the usufructuary may thin out as required in order that the remaining trees may properly develop.

With the exception of the provisions contained in the foregoing paragraphs, the usufructuary can not cut trees close to the ground unless it be to restore or improve some of the things held in usufruct, and in such case he must previously inform the owner of the necessity for the work.

ART. 486. The usufructuary of an action to recover an estate or property right, or personal property, has a right to enforce it, and to oblige the owner of the action to give him his representation for this purpose, and to furnish him the proofs he may have. When, by reason of the enforcement of such action, he acquires the thing claimed, the usufruct shall be limited to the fruits only, the ownership going to the proprietor.

ART. 487. The usufructuary may make on the property which is the object of the usufruct any improvements, useful or for recreation, which he may deem proper, provided he does not change its form or substance; but he shall have no right to be indemnified therefor. He may, however, remove said improvements, should it be possible to do so without injury to the property.

ART. 488. The usufructuary may set off any damage to the property with the improvements he may have made thereon.

ART. 489. The owner of property, the usufruct of which is held by another, may alienate it, but can not change its form or substance nor do anything to the prejudice of the usufructuary.

ART. 490. The usufructuary of part of a thing held in common shall exercise all the rights corresponding to the owner thereof with regard to the administration and collection of fruits or interests. Should the community cease by reason of the division of the thing possessed in common, the usufruct of the part awarded to the owner or coowner shall appertain to the usufructuary.

SECTION THIRD.—*Obligations of the usufructuary.*

ART. 491. The usufructuary, before entering upon the enjoyment of the property, is obliged—

1. To make, after summoning the owner or his legitimate representative, an inventory of all the property, having an appraisal of the personal property made, and describing the condition of the real property.

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2. To give security, binding himself to comply with the obligations imposed on him by this section.

ART. 492. The provision contained in number 2 of the foregoing article is not applicable to the vendor or donor who has reserved to himself the usufruct of the property sold or bestowed as a gift, nor to parents who are the usufructuaries of the property of their children, nor to the surviving spouse with regard to the hereditary portion granted to him or her by articles 834, 836, and 837, except in case the parents or spouse contract a second marriage.

ART. 493. The usufructuary, whatever the title for his usufruct may be, may be excused from the obligation of making an inventory or of giving security when no one will be injured thereby.

ART. 494. Should the usufructuary not give security in cases in which he should do so, the owner may require that the real property be placed under administration; the personal property sold; that the public securities, instruments of credit, payable to order or to bearer, be converted into certificates or be deposited in a bank or public institution; and that the capital or sums in cash and money received from sales of personal property be invested in safe securities.

Interest on money received from the sale of personal property and that on public securities and bonds, and the proceeds of property placed under administration, belong to the usufructuary.

The owner may furthermore, if he prefers it, while the usufructuary gives no security or is excused from doing so, retain in his possession the property of the usufruct, as administrator, and with the obligation of delivering the net proceeds thereof to the usufructuary, after deducting the sums which may be agreed upon or may be judicially fixed for said administration.

ART. 495. If the usufructuary who has not given security claims, under security given under oath, the delivery of the furniture required for his use, and that a dwelling be assigned to him and his family in a house included in the usufruct, the judge may grant his request, after considering the circumstances of the case.

The same shall be understood with regard to instruments, implements, and other personal property, required for the industry in which he is engaged.

Should the owner not wish that some pieces of furniture be sold, either by reason of their artistic merit or on account of being keepsakes, he may demand their delivery to him upon giving security for the payment of the legal interest on their appraised value.

ART. 496. After the security has been given by the usufructuary he shall be entitled to all the proceeds from the day on which he should have begun to receive them, in accordance with the instrument creating the usufruct.

ART. 497. The usufructuary must take care of the property given in usufruct as a good father of a family would.

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ART. 498. A usufructuary who should alienate or lease his right of usufruct shall be liable for the damage suffered by the property in usufruct through the fault or neglect of the person who substitutes him.

ART. 499. If the usufruct should be created on a flock, or on a herd of cattle, the usufructuary shall be obliged to replace with the young thereof those dying annually or naturally and those carried away by the rapacity of preying animals.

If the cattle on which the usufruct is created should all perish, without fault of the usufructuary, by reason of a contagious disease or any other uncommon event, the usufructuary shall fulfill his duty by delivering to the owner those remaining which may have been saved from this misfortune.

Should the herd partially perish, also by reason of accident and without the fault of the usufructuary, the usufruct shall continue with regard to the part saved.

Should the usufruct be on sterile stock, it shall be considered for all its purposes as created on consumable objects.

ART. 500. The usufructuary is obliged to make the ordinary repairs required by the things given in usufruct.

Ordinary repairs shall be considered those required by the ordinary wear and tear produced by the natural use of things, and which are indispensable for their preservation. Should he not make them after being requested to do so by the owner, the latter may make them at the expense of the usufructuary.

ART. 501. Extraordinary repairs shall be made for the account of the owner. The usufructuary is obliged to notify him when the necessity of making them is urgent.

ART. 502. If the owner should make the extraordinary repairs he shall be entitled to demand of the usufructuary the legal interest on the amount invested in them during the continuance of the usufruct.

Should he not make them when they are indispensable for the preservation of the thing, the usufructuary may make said repairs; but he shall have a right to demand of the owner, on the expiration of the usufruct, the increase in value which the estate may have acquired by reason of said works.

Should the owner refuse to pay said amount the usufructuary shall have the right to retain the thing until he reimburses himself with the proceeds thereof.

ART. 503. The owner may make the works and improvements which may be proper on the estate in usufruct, or new plantations thereon if it is rural property, provided the value of the usufruct is not reduced nor the rights of the usufructuary prejudiced by such acts.

ART. 504. The payment of the annual charges and taxes and of those considered liens on the fruits shall be made by the usufructuary during the continuation of the usufruct.

ART. 505. The taxes which may be imposed directly upon the capital, during the usufruct, shall be paid by the owner.

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If the latter should have paid them the usufructuary must pay him the proper interest on the sums he may have disbursed by reason thereof, and if the usufructuary should advance the amounts of such taxes he shall recover them on the expiration of the usufruct.

ART. 506. If the usufruct should be created on the entire patrimony, and if, at the time of its creation, the owner has debts, the provisions of articles 642 and 643 relating to gifts shall be applied for the maintenance of the usufruct as well as for the obligation of the usufructuary to pay them.

The same provision is applicable in case the owner, at the time of the creation of the usufruct, should be obliged to pay periodical sums even though there be no known principal.

ART. 507. The usufructuary may claim the credits due which form part of the usufruct if he has given or gives the proper security. If he has been excused from giving security, or if he can not do so, or if that given is not sufficient, he shall require the authorization of the owner, or, in his absence, of the judge to collect said credits.

The usufructuary who has given security may invest the sum he collects in any manner he may deem fit. The usufructuary without bond must invest said capital at interest, upon agreement with the owner, and in the absence of such an agreement, with judicial authorization, and in every case with security sufficient to preserve the integrity of the capital in usufruct.

ART. 508. The universal usufructuary must pay in full the legacy of a life annuity or the pension for support.

The usufructuary of an aliquot part of the estate shall pay in proportion to his share.

In neither of the two cases shall the owner be obliged to make any reimbursements.

The usufructuary of one or more specified things shall pay the legacy only when the annuity or pension is expressly charged upon them.

ART. 509. The usufructuary of a mortgaged estate shall not be obliged to pay the debt for the security of which the mortgage was created.

When the estate is attached or judicially sold for the payment of the debt, the owner shall be liable to the usufructuary for what he may lose by reason thereof.

ART. 510. Should the usufruct be of the whole or of an aliquot part of an inheritance, the usufructuary may advance the sums which may correspond to the property in usufruct for the payment of the debts of the estate and shall be entitled to demand their return from the owner, without interest, at the expiration of the usufruct.

Should the usufructuary refuse to make this advance, the owner may request the sale of the part of the property in usufruct which may be necessary to pay said sums, or pay them with his own money, being entitled in such case to demand the proper interest of the usufructuary.

ART. 511. The usufructuary is obliged to notify the owner of any act of a third person, of which he may have knowledge, which might injure

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the rights of ownership, and shall be liable, should he not do so, for the losses and damages as if they were caused by his own fault.

ART. 512. The expenses, costs, and judgments of the litigation instituted, with regard to the usufruct, shall be charged to the usufructuary.

SECTION FOURTH.— *Ways of extinguishing a usufruct.*

ART. 513. A usufruct is extinguished:

1. By the death of the usufructuary.
2. By the expiration of the period for which it was created or by the fulfillment of the condition subsequent mentioned in the instrument creating it.
3. By the merger of usufruct and ownership in the same person.
4. By the renunciation of the usufructuary.
5. By the total loss of the property in usufruct.
6. By the termination of the right of the person constituting it.
7. By prescription.

ART. 514. If the thing given in usufruct should suffer a partial loss only, this right shall continue with regard to the remainder.

ART. 515. The usufruct can not be created for more than thirty years in favor of a town, corporation, or association. Should it have been created, and before said period the town becomes deserted or the corporation or association is dissolved, the usufruct shall be extinguished by this fact.

ART. 516. The usufruct granted for the time until a third person attains a certain age shall continue during the number of years specified, even though the third person dies before, unless said usufruct has been expressly granted only because of the existence of the said person.

ART. 517. If the usufruct is created on an estate of which a building forms part, and the latter should be destroyed in any manner whatsoever, the usufructuary shall be entitled to enjoy the use of the land and material.

This shall also be the case if the usufruct is created upon the building only, and should the latter be destroyed. But, in such case, if the owner desires to construct another building he shall have a right to occupy the ground and to make use of the materials, being obliged to pay the usufructuary during the continuance of the usufruct the interest upon the sums equivalent to the value of the ground and of the materials.

ART. 518. If the owner shares with the usufructuary the insurance of the estate given in usufruct, he shall continue, in case of accident, in the enjoyment of the new building, should one be constructed, or shall receive the interest on the amount of the insurance if the owner does not wish to rebuild.

If the owner should have refused to contribute to the insurance of the estate, and the usufructuary does so alone, the latter shall acquire the

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right, in case of accident, to collect in full the amount of the insurance, but with the obligation of investing it in rebuilding the estate.

If the usufructuary should have refused to contribute to the insurance and the owner does so alone, the latter shall receive, in case of accident, the full amount of the insurance, always reserving the right granted the usufructuary in the foregoing article.

ART. 519. If the thing in usufruct should be condemned by way of eminent domain, the owner shall be obliged either to replace it with another of the same value, and having similar conditions, or to pay the usufructuary the legal interest on the amount of the indemnity during the continuance of the usufruct. If the owner chooses the latter, he is obliged to give security for the payment of the interest.

ART. 520. A usufruct is not extinguished by the bad use of the thing in usufruct; but if the abuse causes considerable loss to the owner, the latter may request that the thing be delivered to him, binding himself to pay annually to the usufructuary the net proceeds of the same, after deducting the expenses and the compensation which may be allowed him for its administration.

ART. 521. The usufruct created in favor of several persons living at the time of its creation shall not be extinguished until the death of the last survivor.

ART. 522. Upon the expiration of the usufruct the thing in usufruct shall be delivered to the owner, reserving the right of retention appertaining to the usufructuary or his heirs, for disbursements, which should be repaid. After the delivery is made the bond or the mortgage shall be canceled.

CHAPTER SECOND.

Use and occupancy.

ART. 523. The rights and obligations of a person having the use and of the one who has a right of occupancy shall be governed by the instruments creating such rights, and in their absence by the following provisions.

ART. 524. Use gives a right to receive, out of the fruits of another's property, whatever may be required to provide for the necessities of the person enjoying the use, and of his family, even when the latter increases.

Occupancy gives the person having this right that of occupying in another's house the apartments he may require for himself and for the members of his family.

ART. 525. The rights of use and occupancy can not be leased, nor transferred to another person in any manner.

ART. 526. The person having the use of a flock or of a herd of cattle may make use of the young, milk, and wool thereof, in so far as may be required for the consumption of himself and family, as well as of the dung required for manuring the land he may cultivate.

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ART. 527. If the person enjoying the use consumes all the fruits of another's property, or if the person having the right of occupancy should occupy the whole house, he shall be obliged to pay all the expenses of cultivation, ordinary repairs for the preservation thereof, as well as the taxes, in the same manner as the usufructuary.

If he receives a part of the fruits only, or dwells in a part of the house, he need make no payments, provided that a part of the fruits or benefits sufficient to cover the expenses and taxes remain to the owner. Should they not be sufficient, the former shall pay what may be required.

ART. 528. The provisions established for usufructs are applicable to the rights of use and occupancy, in so far as they do not conflict with those contained in this chapter.

ART. 529. The rights of use and occupancy are extinguished by the same causes as that of usufruct, and, furthermore, by serious abuse of the thing or dwelling.

TITLE VII.

Easements.

CHAPTER FIRST.

Easements in general.

SECTION FIRST.—*Different kinds of easements which may be established on estates.*

ART. 530. An easement is a charge imposed upon real property for the benefit of another estate belonging to a different owner.

The real property in favor of which the easement is established is called the dominant estate, and the one charged with it the servient estate.

ART. 531. Easements may also be established for the benefit of one or more persons or of a community to whom the incumbered estate does not belong.

ART. 532. Easements may be continuous, intermittent, apparent or nonapparent.

Continuous easements are those the use of which is or may be incessant without the intervention of any act of man.

Intermittent easements are those used at more or less long intervals and which depend upon acts of men.

Apparent easements are those which are well known and which are continually in view by external signs, which show the use and benefit of the same.

Non apparent easements are those which show no external sign of their existence.

ART. 533. Easements are, furthermore, positive or negative.

A positive easement is called one which imposes upon the owner of the servient estate the obligation of allowing something to be done or

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doing it himself, and a negative easement that which forbids the owner of the servient estate to do something which he could properly do if the easement did not exist.

ART. 534. Easements are inseparable from the estate to which they actively or passively belong.

ART. 535. Easements can not be divided. When the servient estate is divided among two or more persons the easement is not modified, and each division has to bear the part corresponding to it.

If the dominant estate is divided among two or more persons each part owner may use the easement wholly, provided the place of its use is not changed, nor increasing the easement in any manner whatsoever.

ART. 536. Easements are established either by law or by the will of the owners. The former are called legal and the latter voluntary.

SECTION SECOND.—*Manner of acquiring easements.*

ART. 537. Continuous and apparent easements are acquired either by virtue of title or by prescription of twenty years.

ART. 538. In order to acquire by prescription the easements referred to in the foregoing article, the time of the possession shall be counted, in positive easements, from the day on which the owner of the dominant estate or the one who has made use of the easement has commenced to exercise the right on the servient estate; and in negative easements, from the day on which the owner of the dominant estate has, by a formal act, forbidden the owner of the servient one to execute the act which would be legal without the easement.

ART. 539. Continuous nonapparent easements and intermittent ones, either apparent or not, can only be acquired by virtue of a title.

ART. 540. The lack of title establishing an easement which can not be acquired by prescription can only be substituted by the instrument of acknowledgment by the owner of the servient estate or by a final judgment.

ART. 541. The existence of an apparent sign of an easement between two estates established by the owner of both shall be considered, should one of them be alienated, as a title, in order that the easement may continue actively and passively, unless, at the time of the division of the ownership of both estates, the contrary should be expressed in the instrument of alienation of either of them, or if said sign is removed before the execution of the instrument.

ART. 542. In establishing an easement, all the rights necessary for its use are understood to be granted.

SECTION THIRD.—*Rights and obligations of owners of dominant and servient estates.*

ART. 543. The owner of the dominant estate may make, at his own expense, on the servient estate the works necessary for the use and preservation of the easement, but without changing it or rendering it more onerous.

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He must select therefor the most convenient time and manner in order to cause the least possible inconvenience to the owner of the servient estate.

ART. 544. Should there be several dominant estates, the owners of all of them shall be obliged to contribute to the expenses referred to in the foregoing article, in proportion to the benefit each may obtain from the work. The one who does not wish to contribute may exempt himself by renouncing the easement for the benefit of the others.

If the owner of the servient estate should, in any manner whatsoever, make use of the easement, he shall be obliged to contribute to the expenses in the proportion above stated, unless there is an agreement to the contrary.

ART. 545. The owner of the servient estate can not impair, in any manner whatsoever, the use of an established easement.

However, if by reason of the place originally assigned or of the manner established for the use of the easement, the latter should become too inconvenient to the owner of the servient estate or should prevent him from making works, repairs, or important improvements, it may be changed at his expense, provided he offers another place or manner equally convenient, and that no injury is caused the owner of the dominant estate or those who have a right to the use of the easement.

SECTION FOURTH.—*Ways of extinguishing easements.*

ART. 546. Easements are extinguished:

1. By merger in the same person of the ownership of the servient and dominant estates.

2. By nonuser for twenty years.

This period shall commence to be counted, in intermittent easements, from the day on which it has ceased to be used; and, with regard to continuous ones, from the day on which an act in contravention of the easement may have occurred.

3. When the estates become in such condition that the easement can not be made use of; but it shall revive, if subsequently the condition of the estates permits it to be used, unless, when the use becomes possible, sufficient time has elapsed for the prescription, in accordance with the provisions of the foregoing number.

4. When the day falls due, or when the condition is fulfilled, if the easement be temporary or conditional.

5. By the renunciation of the owner of the dominant estate.

6. By the redemption agreed upon between the owners of the dominant and servient estates.

ART. 547. The manner of permitting the enjoyment of the easement shall be prescribed like the easement itself, and in the same way.

ART. 548. If the dominant estate belongs to several persons in common, the use of the easement made by one of them prevents the prescription with regard to the others.

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CHAPTER SECOND.

Legal easements.

SECTION FIRST.—*General provisions.*

ART. 549. The purpose of easements, imposed by law, is either public utility or the interest of private persons.

ART. 550. All that concerns easements, established for the public or common utility, shall be governed by the special laws and regulations pertaining thereto, and, in their absence, by the provisions of this title.

ART. 551. The easements, established by law for the interests of private persons or for causes of private utility, shall be governed by the provisions of this title, without prejudice to the provisions of general or local laws, regulations, and ordinances with regard to city or rural police.

These easements may be modified by agreement among the persons interested, if the law does not prohibit, and if it does not prejudice a third person.

SECTION SECOND.—*Easements with regard to waters.*

ART. 552. Lower estates must receive the waters which naturally and without the intervention of man descend from the higher estates, as well as the stone or earth which they carry with them.

Neither may the owner of the lower estate construct works preventing this easement, nor the one of the higher estate works increasing the burden.

ART. 553. The banks of the rivers, even when they are of private ownership, are subject in their entire length and in their margins for a zone of three meters to the easement of the public use in the general interest of navigation, floatage, fishing, and salvage.

The estates adjoining the banks of navigable or floatable rivers are furthermore subject to the easement of a towpath for the exclusive service of river navigation and floatage.

Should it be necessary to occupy, for such purpose, lands of private ownership, the proper indemnity must first be paid.

ART. 554. If for the diversion or taking of waters from a river or brook or for the use of other continuous or intermittent streams it should be necessary to construct a dam, and the person who is to do so is not the owner of the banks or land upon which to support it, he may establish the easement for abutment of the dam by previously paying proper indemnity.

ART. 555. Obligatory easements for drawing water and for watering animals may be imposed only for a cause of public utility in favor of a town or village after the proper indemnity.

ART. 556. The easements for drawing water and for watering animals carry with them the obligation on the servient estates of giving

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the right of way to the persons and animals to the point where it can be utilized, and the indemnity must include this service.

ART. 557. Whosoever wishes to make use of water, of which he may dispose for an estate belonging to him, has the right to cause it to pass through the intermediate estates, with the obligation of indemnifying their owners, as well as those of the lower estates upon which the waters may filter or descend.

ART. 558. A person desiring to make use of the right granted in the foregoing article is obliged:

1. To prove that he has a right to dispose of the water, and that it is sufficient for the use to which it is destined.

2. To show that the right of way he requests is the most convenient and least onerous to a third person.

3. To indemnify the owner of the servient estate in the manner prescribed by the laws and regulations.

ART. 559. The easement of an aqueduct for an object of private interest can not be imposed on buildings nor their yards or dependencies, nor on gardens or orchards already in existence.

ART. 560. The easement of an aqueduct does not prevent the owner of the servient estate from closing and fencing it, nor from building over the aqueduct, in such manner that the latter suffers no damage nor renders impossible necessary repairs and cleanings.

ART. 561. The easement of an aqueduct for its legal effects shall be considered as continuous and apparent, even though the passage of the water is not continuous, or even if its use depends on the requirements of the dominant estate, or periods consisting of days or hours.

ART. 562. A person who for the purpose of irrigating his estate or improving it has to construct a stop lock or a sluice gate in a mill race through which it is to receive water, may demand that the owners of the margins allow their construction, after paying all loss and damage, including those caused by the new easement to the said owners and to the other irrigators.

ART. 563. The establishment, extent, form, and conditions of the easements of waters to which this section refers shall be governed by the special law relating thereto in everything not provided for in this code.

SECTION THIRD.—*Right of way.*

ART. 564. The owner of an estate or of property surrounded by others, belonging to several owners, and having no exit to public roads, has a right to demand a right of way through the neighboring estates on paying the proper indemnity.

If this easement is constituted in such manner that its use may be continuous for all the requirements of the dominant estate, establishing a permanent passage, the indemnity shall include the value of the land occupied and the amount of the damage caused the servient estate.

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When it is limited to the passage required for the cultivation of the estate surrounded by others, and for the transportation of its crops through the servient estate without a permanent passage, the indemnity shall consist in the payment of the damage caused by said encumbrance.

ART. 565. The right of way must be at the point least prejudicial to the servient estate, and in so far as is consistent with this rule where the distance from the dominant estate to the public road may be the shortest.

ART. 566. The width of the right of way shall be sufficient for the necessities of the dominant estate.

ART. 567. When an estate, acquired by sale, exchange, or division should be surrounded by other estates of the vendor, exchanger, or coowner, the latter shall be obliged to grant right of way without indemnity, unless there is an agreement to the contrary.

ART. 568. If the right of way granted to an inclosed estate ceases to be necessary because the owner thereof has joined it to another abutting on the public road, the owner of the servient estate may demand the extinguishment of the easement, returning what he may have received by way of indemnity.

The same shall be understood in case a new road is opened giving access to the inclosed estate.

ART. 569. If it is indispensable for the construction or repair of a building to carry the materials through another's estate, or construct thereon scaffolding or other objects for the work, the owner of said estate is obliged to consent thereto, receiving an indemnity corresponding to the damage caused him.

ART. 570. Existing rights of way for the passage of stock, known by the name of sheep path, trail, footpath, or by any other, and those for watering and resting places and sheepfolds shall be governed by the ordinances and regulations relating thereto, and, in their absence, by the uses and customs of the locality.

Without prejudice to rights legally acquired, a path shall not exceed 75 meters in width; a trail, 37 meters 50 centimeters, and a footpath, 20 meters.

When it may be necessary to establish an obligatory right of way or for a drinking trough for cattle, the provisions of this section and of articles 555 and 556 shall be observed. In this case the width can not exceed 10 meters.

SECTION FOURTH.—*Easements of party walls and fences.*

ART. 571. The easements of party walls and fences shall be governed by the provisions of this title, and by the local ordinances and customs in so far as they do not conflict with the same or if there are no provisions in regard thereto.

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ART. 572. The easement of party walls and fences is presumed, unless there is a title or exterior mark or proof to the contrary:

1. In dividing walls of adjoining buildings up to the point of elevation in common.

2. In dividing walls of gardens or yards situated in cities or in the country.

3. In fences, inclosures, and live hedges dividing rural estates.

ART. 573. It is understood that there are exterior signs, in contravention of the easement of party wall and fences:

1. When in dividing walls of buildings there are windows or openings.

2. When the dividing wall is, on one side, true and plumb in all its facement, and has similar conditions in the upper part of the other side, but in the lower part thereof slants or projects.

3. When the entire wall is built on the land of one of the estates, and not on the dividing line of the two contiguous estates.

4. When it bears the burden of the binding beams, floors, and roof frame of one of the houses and not of the adjoining one.

5. When the dividing walls between yards, gardens, and estates are so constructed that the coping sheds the waters toward one of the estates.

6. When the dividing wall being constructed of stone and cement, has stones called stepping stones, which at intervals project from the susface on one side only and not on the other.

7. When rural estates adjoining others inclosed by fences or live hedges are themselves not closed.

In all these cases the ownership of the walls, inclosures, or hedges shall be understood as vested exclusively in the owner of the property or estate who has in his favor the presumption based on any one of the said signs.

ART. 574. Open ditches or drains between estates are also considered as common if there is no title or sign proving the contrary.

There is a sign contrary to ownership in common when the earth or dirt removed to open or clean the ditch has been done only on one side thereof, in which case the ownership of the ditch shall be vested exclusively in the owner of the estate having this exterior sign on its side.

ART. 575. The cost of repairs and construction of party walls and the preservation of inclosures, live hedges, ditches, and drains in common shall be borne by all the owners of the estates who are interested therein, in proportion to the right of each one.

Nevertheless, any owner may refuse to contribute to this charge by renouncing his right, except in case the party wall supports a building belonging to him.

ART. 576. If the owner of a building supported by a party wall desires to demolish it, he may also renounce the part ownership; but all the repairs and works necessary to prevent damages which the demolition may cause to the party wall, on this occasion only, shall be paid for by him.

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ART. 577. Every owner may construct a party-wall by erecting it, at his own expense, and by paying for any damages which may be caused by the work, even when only temporary.

He shall also have to pay for the expenses of maintaining the wall in the part newly raised or deepened at its foundation, with regard to its former condition, and besides the indemnity for the increased expenses which it may be necessary to incur in order to preserve the party-wall by reason of the greater height or depth which has been given the same.

If the party-wall can not bear the increased height, the owner desiring to raise it, shall be obliged to reconstruct it at his own expense, and, should it be necessary therefor to make it thicker, he shall give the space required from his own land.

ART. 578. The other owners, who have not contributed in giving increased height, depth, or thickness to the wall, may, nevertheless, acquire therein the right of part ownership by paying the value of the work and one-half that of the land appropriated for its increased thickness in proportion to their interest.

ART. 579. Every owner of a party-wall may use it in proportion to the right he may have in the part ownership. He may therefore build, supporting his structure on the party-wall, or introduce joists up to one-half its thickness, but without interfering with the common and respective uses of the other part-owners.

In order that the part-owner may make use of this right, he must previously obtain the consent of the other parties interested in the part-ownership; and, should he not obtain it, the conditions necessary in order that the new work may not injure the right of the former shall be fixed by experts.

SECTION FIFTH.—*Easement of light and view.*

ART. 580. No part-owner may, without the consent of the other, make in the party-wall any window or opening whatsoever.

ART. 581. The owner of a wall which is not a party-wall, adjoining another's estate, may make in it windows or openings to admit light, at the height of the ceiling joists or immediately under the ceiling, of the dimensions of 30 centimeters square, and, in any case, with an iron grate embedded in the wall and a wire screen.

However, the owner of the house or estate adjoining the wall in which the openings are made may close them, if he acquires the part ownership of the wall and should there be no agreement to the contrary.

He may also obstruct them by building on his land or raising a wall adjacent to that having such opening or window.

ART. 582. Windows with direct views, or balconies or any similar openings projecting over the estate of the neighbor, can not be made if there is not a distance of, at least, 2 meters between the wall in which they are built and said estate.

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Neither can side nor oblique views be opened over said property, unless there is a distance of 60 centimeters.

ART. 583. The distances referred to in the foregoing article shall be measured, in cases of direct views, from the outer line of the wall when the openings do not project, from the line of the latter when they exist, and for oblique views from the dividing line of both estates.

ART. 584. The provisions of article 582 are not applicable to buildings separated by a public thoroughfare.

ART. 585. When, under any title, a right has been acquired to have direct views, balconies, or lookouts overlooking adjacent property, the owner of the servient estate can not build thereon at less than 3 meters distance, to be measured according to the manner mentioned in article 583.

SECTION SIXTH.—*Drainage of buildings.*

ART. 586. The owner of a building is obliged to construct his roofs or coverings in such a manner that rain water may fall on his own land or on the street or public place, and not on the land of his neighbor. Even if it falls on his own land, the owner is obliged to collect it in such manner that it will not injure the adjoining estate.

ART. 587. The owner of the estate charged with an easement of receiving water discharged from roofs may build in such manner as to receive the waters upon his own roof, or give them another outlet, in accordance with the local ordinances or customs, and so as not to be burdensome or detrimental to the dominant estate in any manner whatsoever.

ART. 588. When the yard or court of a house is inclosed between others, and it should not be possible to give an outlet through the house itself to the rain water collected therein, the establishment of an easement of drain may be demanded, giving an outlet to the waters at the point of the contiguous estates where its egress may be the easiest, and establishing a conduit for the drain in such manner as to cause the least damage to the servient estate, after the proper indemnity.

SECTION SEVENTH.—*Intermediate distances and works for certain constructions and plantings.*

ART. 589. Buildings can not be constructed nor plantings made near fortified places or fortresses without submitting to the conditions required by the special laws, ordinances, and regulations relating thereto.

ART. 590. No one shall construct near a wall belonging to another, or near a party wall, wells, sewers, aqueducts, kilns, forges, chimneys, stables, or make deposits of corrosive material, or build manufactories operated by steam, or factories which by reason of their character or products are dangerous or noxious, without observing the distances prescribed by the regulations and customs of the locality and without

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making the necessary protective works, subject in regard to form to the conditions prescribed by said regulations.

In the absence of regulations the precautions which may be considered necessary shall be taken, after an expert opinion, in order to avoid any damage to the neighboring estates or buildings.

ART. 591. Trees shall not be planted near another's estate, except at the distance authorized by the ordinances or customs of the locality, and in their absence at a distance of 2 meters from the dividing line of the estates, if the planting is made of tall trees, and at 50 centimeters if the planting is of shrubs or small trees.

Every owner has a right to demand that trees which may be planted in the future at a lesser distance from his estate be uprooted.

ART. 592. Should the branches of any tree extend over a neighboring estate, gardens, or yards, the owner of the latter shall have a right to demand that they be cut in so far as they extend over his property; and should the roots of the neighboring trees extend into another's land the owner of said land may himself cut them within his estate.

ART. 593. Trees existing in a party live hedge shall also be considered as party trees, and any of the owners has a right to demand their uprooting.

Trees serving as boundary marks are excepted, which may only be uprooted by common consent of the owners of the adjoining estates.

CHAPTER THIRD.

Voluntary easements.

ART. 594. Every owner of an estate has a right to charge it with all the easements he may deem fit, and in the manner and form that he may consider best, provided he does not violate the laws nor public order.

ART. 595. The owner of an estate the usufruct of which belongs to another may impose thereon, without the consent of the usufructuary, any easements not injuring the right of usufruct.

ART. 596. When one person has the legal title in an estate and another has the beneficial title, no perpetual voluntary easement can be established thereon without the consent of both parties in interest.

ART. 597. In order to impose an easement on an undivided estate, the consent of all the part owners shall be required.

The consent given by some only shall remain in suspension until every one of the joint or co-owners agrees thereto.

But the consent given by one of the part owners severally shall bind the grantor or his successors, even if they be so by private title, not to prevent the exercise of the right granted.

ART. 598. The title, and in a proper case the possession, of an easement acquired by prescription determines the rights of the dominant estate and the obligation of the servient estate. In its absence the easement shall be governed by such provisions of this title which may be applicable.

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ART. 599. If the owner of the servient estate has bound himself at the time of creating the easement to defray the cost of the works required for the use and preservation thereof he may free himself from this charge by abandoning his estate to the owner of the dominant estate.

ART. 600. Pasturage in common may only be established in the future by an express consent of the owners, contained in a contract or last will, and not in favor of a universality of persons or a universality of property, but in favor of specified individuals and on estates also definite and specified.

An easement established in accordance with this article shall be governed by the instrument of its creation.

ART. 601. Pasturage in common in public lands, whether belonging to the municipalities or to the State, shall be governed by the administrative laws.

ART. 602. If pasturage in common exists between residents of one or more towns, the owner who incloses an estate with a fence or hedge shall free the same from the pasturage in common. The other easements, nevertheless, established on the same shall continue.

The owner who incloses his estate shall preserve his right to the pasturage in common in the other estates which are not inclosed.

ART. 603. The owner of land encumbered by the easement of pasturage may redeem it by paying the value thereof to those having the right thereto.

In the absence of an agreement, the amount of said redemption shall be fixed upon the basis of 4 per cent of the annual value of the pasturage, fixed by an expert appraisal.

ART. 604. The provisions contained in the preceding article are applicable to easements established for the use of firewood and other products of forests which are private property.

TITLE VIII.

The registry of property.

FIRST AND LAST CHAPTER.

ART. 605. The purpose of the registry of property is to enter or record therein the instruments and contracts relating to ownership and other property rights in real property.

ART. 606. The titles of ownership or of other property rights relating to real estate which are not properly recorded or entered in the registry of property shall not prejudice third persons.

ART. 607. The registry of property shall be public for those who have a known interest in ascertaining the condition of real property or property rights recorded or entered therein.

ART. 608. The provisions of the mortgage law shall be observed with regard to the determination of instruments subject to record or entry, the form, effect, and extinction of the same, the manner of keeping the registry, and value of the entries contained in the books of the same.

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BOOK THIRD.

DIFFERENT WAYS OF ACQUIRING OWNERSHIP.

Preliminary provision.

ART. 609. Ownership is acquired by retention.

Ownership and other property rights are acquired and transmitted by law, by gift, by testate or intestate succession, and, in consequence of certain contracts, by tradition.

TITLE I.

Retention.

ART. 610. Things are acquired by retention which can be appropriated by reason of their nature, which have no owners, such as animals which are the object of hunting and fishing, hidden treasure, and abandoned property.

ART. 611. The right to hunt and fish is governed by special laws.

ART. 612. The owner of a swarm of bees shall have a right to pursue them on another's estate, indemnifying the possessor of the latter for the damage caused. Should it be inclosed, he shall require the consent of the owner to enter the same.

Should the owner not have pursued, or should he abandon the pursuit of the swarm for two consecutive days, the possessor of the estate may take or retain it.

The owner of tamed animals may also claim them within twenty days, counted from the date of their retention by another. After this period has elapsed, they shall belong to the person who may have caught and kept them.

ART. 613. Pigeons, rabbits, and fish, which, from their respective breeding places, should pass to another one, belonging to a different owner, shall be the property of the latter, provided they have not been enticed by means of some trickery or fraud.

ART. 614. A person finding a treasure by chance, hidden on another's property, shall have the right granted him by article 351 of this code.

ART. 615. A person finding any personal property, which is not treasure, must return it to its former possessor. Should the latter be unknown, he must deliver it immediately to the mayor of the town where the find was made.

The mayor shall publish it in the usual manner two consecutive Sundays.

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Should it not be possible to keep the personal property found without injury or without incurring expenses greatly reducing its value, it shall be sold at public auction, after eight days have elapsed from the second advertisement, without the owner having apppeared, and the proceeds shall be deposited.

After two years have elapsed from the date of the second advertisement, without the owner having appeared, the thing found or its value shall be awarded to the person who found it.

The latter, or the owner in a proper case, shall be obliged to pay the costs.

ART. 616. Should the owner appear, in due time, he shall be obliged to pay, as a reward to the finder of the thing, a tenth part of the sum or of the value of the article found. If the value of the find exceeds 2,000 pesetas, the reward shall be reduced to a twentieth with regard to the excess.

ART. 617. The rights to goods jettisoned, or to those cast ashore by the waves, whatever their nature may be, or to plants and herbs growing on the seashore, are fixed by special laws.

TITLE II.

Gifts.

CHAPTER FIRST.

Nature of gifts.

ART. 618. A gift is an act of liberality by which a person disposes gratuitously of a thing in favor of another, who accepts it.

ART. 619. A gift is also what is given a person by reason of his merits or for services rendered the donor, provided it does not constitute a recoverable debt, or that which imposes upon the donee a burden inferior to the value of the gift.

ART. 620. Gifts which are to become effective upon the death of the donor partake of the nature of provisions by last will and shall be governed by the laws established for testamentary succession.

ART. 621. Gifts which are to produce their effects *inter vivos* shall be governed by the general provisions of contracts and obligations in all that is not determined in this title.

ART. 622. Gifts for valuable considerations shall be governed by the laws of contracts, and those for valuable considerations by the provisions of this title with regard to the part exceeding the value of the charge imposed.

ART. 623. A gift is consummated upon the donor having knowledge of its acceptance by the donee.

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CHAPTER SECOND.

Persons who can bestow or receive gifts.

ART. 624. All persons who can contract and dispose of their property may bestow gifts.

ART. 625. All persons who are not especially disqualified by law therefor may accept gifts.

ART. 626. Persons who can not enter into contracts can not accept conditional gifts or those involving valuable considerations without the intervention of their legal representatives.

ART. 627. Gifts made to persons, conceived but yet unborn, may be accepted by the persons who would legally represent them if they should already be born.

ART. 628. Gifts made to incapacitated persons are void even though made in a fictitious manner, under the guise of another contract, by a third person.

ART. 629. A gift does not bind the donor nor produce any effect until accepted.

ART. 630. The donee must, under pain of nullity, accept the gift in person or through a person authorized by a special power for the purpose or having a general or sufficient power of attorney.

ART. 631. Persons accepting a gift representing others who can not do so in person are obliged to obtain the notification and record referred to in article 633.

ART. 632. Gifts of personal property may be made verbally or in writing.

The verbal one requires the simultaneous delivery of the thing bestowed as a gift. In the absence of this requisite the gift shall produce no effect if not made in writing and if the acceptance does not appear in the same manner.

ART. 633. In order that a gift of real property may be valid it shall be made in a public instrument, stating therein in detail the property bestowed as a gift and the amount of the charges, which the donee must satisfy.

The acceptance may be made in the same instrument bestowing the gift or in a different one; but it shall produce no effect if not made during the life of the donor.

If made in a different instrument the acceptance shall be communicated to the donor in an authentic manner, and this proceeding shall be recorded in both instruments.

CHAPTER THIRD.

Effects and limitations of gifts.

ART. 634. A gift may include all the actual property of the donor or a part thereof, provided the latter reserves, by legal title or in usufruct,

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what is required for his support in a condition corresponding to his circumstances.

ART. 635. A gift can not include future property.

By future property is considered that which the donor can not dispose of at the time of the gift.

ART. 636. Notwithstanding the provisions of article 634, no person can give nor receive, by way of gift, more than what he can give or receive by will.

A gift shall be considered void in all that exceeds said limits.

ART. 637. When a gift has been made to several persons jointly, it shall be understood as in equal shares; and there shall be among them no right of accretion unless the donor has otherwise ordered.

From these provisions are excepted gifts made jointly to husband and wife, who shall have such right if the donor has not disposed otherwise.

ART. 638. The donee is subrogated to all the rights and actions which, in case of eviction, would correspond to the donor. The latter on his side is not obliged to warrant the things bestowed as a gift, unless the gift is for a valuable consideration, in which case the donor shall be liable for the eviction to the amount of the charge.

ART. 639. The donor may reserve to himself the right to dispose of some of the property bestowed as gift or of an amount as a charge thereon; but should he die without having made use of this right, the property or the sum which may have been reserved shall belong to the donee.

ART. 640. Ownership can also be bestowed as a gift to a person, and the usufruct to another or others, with the limitations established by Art. 781 of this code.

ART. 641. The reversion in favor of the donor only, in any case and under any circumstances, may also be validly established, but not in favor of other persons, except in the same cases and under similar limitations, as prescribed in this code for testamentary substitutions.

The reversion, stipulated by the donor in favor of a third person in contravention of the provisions of the foregoing paragraph, is void, but it shall not cause the annulment of the gift.

ART. 642. When the gift has been bestowed, imposing on the donee the duty of paying the debts of the donor, if the clause should contain no other declaration, the former shall only be bound to pay those contracted before the bestowal of the gift.

ART. 643. Should there be no stipulation as to the payment of debts the donee shall be liable for them only if the gift has been made to defraud creditors.

The gift shall always be presumed as having been made to defraud creditors when, at the time of bestowing it, the donor has not reserved to himself property sufficient to pay the debts contracted prior thereto.

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CHAPTER FOURTH.

Revocation and reduction of gifts.

ARTICLE 644. Every gift *inter vivos* made by a person having no legitimate children nor descendants nor legitimized by a subsequent marriage is revoked by the mere fact of the occurrence of any of the following cases:

1. When the donor, after the gift, should have legitimate or legitimized or acknowledged natural children, even should they be posthumous.

2. When the child of the donor, whom he supposed dead when he bestowed the gift, is found to be alive.

ART. 645. If the gift is rescinded by the subsequent birth of children, the things bestowed as a gift shall be returned to the donor, or their value, if the donee has sold them.

Should they be mortgaged, the donor may cancel the mortgage, paying the sum secured by it, being entitled to demand the sum paid of the donee.

When the things can not be restored they shall be appraised at their value at the time of the bestowal of the gift.

ART. 646. The action of revocation by the subsequent birth of children shall prescribe after five years, counted from the birth of the last child, or from the legitimation or acknowledgment or from the time news was received of the existence of the one who was believed dead.

This action can not be renounced and is transmitted on the death of the donor to his children and to their legitimate descendants.

ART. 647. The gift shall be revoked at the instance of the donor if the donee has not complied with any one of the conditions imposed upon him by the former.

In such case the things bestowed as a gift shall revert to the donor, all the alienations made by the donee and the mortgages he may have placed thereon being rendered void with the limitation with regard to third parties established in the mortgage law.

ART. 648. A gift may also be revoked at the instance of the donor, by reason of ingratitude, in the following cases:

1. When the donee commits any crime against the person, the honor, or the property of the donor.

2. When the donee charges the donor with any of the crimes giving rise to official proceedings or public accusation, even though he proves it, unless the crime should have been committed against the donee himself, his wife, or the children under his authority.

3. When the latter improperly refuses him support.

ART. 649. When a gift is revoked by reason of ingratitude, the alienations and mortgages made prior to the entry of the complaint for revocation in the registry of property shall, nevertheless, be valid.

Subsequent ones shall be void.

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ART. 650. In the case referred to in the first paragraph of the preceding article the donor shall have a right to exact from the donee the value of the properly alienated, which he can not recover from the third persons, or the amount for which they have been mortgaged.

For the appraisal of the value of such property the time the gift was bestowed shall be taken into consideration.

ART. 651. If the gift should be revoked for any of the reasons stated in article 644 or for ingratitude, or when it should be reduced on account of being void, the donee shall not return the fruits, except from the date of the institution of the complaint.

If the revocation should be based on the failure to comply with any one of the conditions imposed by the gift, the donee shall, besides the property, return the fruits he may have collected after the nonfulfillment of the condition.

ART. 652. The action granted the donor for causes of ingratitude can not be renounced in advance. This action prescribes after one year, counted from the time the donor had knowledge of the fact and was able to institute the action.

ART. 653. This action shall not be transmitted to the heirs of the donor if the latter should have been able to institute it and did not do so.

Neither can it be instituted against the heirs of the donee, unless at his death the suit had already been brought.

ART. 654. Gifts which, in accordance with the provisions of article 636, may be void after computing the net value of the property of the donor at the time of his death must be reduced with regard to the excess, but this reduction shall not prevent them from being valid during the life of the donor, nor the donee from appropriating the fruits.

For the reduction of gifts the provisions of this chapter and of articles 820 and 821 of this code shall be observed.

ART. 655. The reduction of gifts can be demanded only by the persons who have a right to a legal portion or to an aliquot part of the estate and their heirs or legal representatives.

The persons included in the preceding paragraph can not renounce their right during the life of the donor, neither by an express statement nor by giving their consent to the gift.

The donees, the legatees who are not to receive an aliquot part, and the creditors of the deceased can not request the reduction or derive any benefit therefrom.

ART. 656. If there are two or more gifts, and all can not be covered by the disposable part of the estate, the latest ones shall either be canceled or reduced with regard to the excess.

TITLE III.

Successions.

GENERAL PROVISIONS.

ART. 657. The rights to the succession of a person are transmitted from the moment of his death.

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ART. 658. Succession is granted either by the will of the man as expressed in a will or, in its absence, by provision of law.

The first is called testamentary, the second legal succession.

It may also be bestowed partly by will of man and partly by provision of law.

ART. 659. The inheritance includes all the property, rights, and obligations of a person, which are not extinguished by his death.

ART. 660. An heir is a person succeeding under an universal title; and a legatee, one succeding under a special title.

ART. 661. Heirs succeed the deceased in all his rights and obligations by the mere fact of his death.

CHAPTER FIRST.

Wills.

SECTION FIRST.—*Capacity to depose by will.*

ART. 662. All persons who are not expressly prohibited by law may make a will.

ART. 663. The following are disqualified to make wills:

1. Persons of either sex under 14 years of age.
2. Persons who permanently or temporarily are not of sound mind.

ART. 664. A will made before mental alienation is valid.

ART. 665. Whenever a lunatic desires to make a will during a lucid interval, the notary shall appoint two physicians to examine him previously, and he shall not execute it unless the latter answer for the capacity of the testator, including their opinion in the will, which shall be subscribed by the physicians besides the witnesses.

ART. 666. In order to judge of the capacity of the testator, his condition at the time of the execution of the will only shall be taken into consideration.

SECTION SECOND.—*Wills in general.*

ART. 667. The act by which a person disposes of all his property or of a part of it, to take effect after his death, is called a will.

ART. 668. The testator may dispose of his property either under title of inheritance or under that of legacy.

In case of doubt, even if the testator has not actually used the word "heir," if his will is clear on this point, his disposition shall be valid as made under a title, either universal or of inheritance.

ART. 669. Two or more persons can not make a will conjointly or in the same instrument, either for their reciprocal benefit or for the benefit of a third person.

ART. 670. A will is absolutely a personal act. The making of it, either wholly or partially, can not be left to the discretion of a third person, nor can it be made through a trustee or agent.

Neither can there be left to the discretion of a third person the continuance of the appointment of heirs or legatees, nor the designation

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of the portions to which they are to succeed when they are nominally instituted.

ART. 671. The testator may intrust to a third person the distribution of the sums he may leave in general to specified classes, such as relatives, the poor, or charitable institutions, and also the designation of the persons or institutions to which such sums are to be applied.

ART. 672. Any provision relating to the institution of heirs, bequests, or legacies, made by the testator, referring to private memoranda or papers which after his death may appear in his domicile or outside thereof, shall be void if such memoranda or papers do not fulfill the requisites prescribed for holographic wills.

ART. 673. A will executed under duress, deceit, or fraud, shall be void.

ART. 674. A person who, by deceit, fraud, or violence, prevents another person, of whom he is the intestate heir, from unrestrictedly executing his last will, shall be deprived of his right to the inheritance without prejudice to the criminal liability he may have incurred.

ART. 675. Every testamentary provision shall be understood in the literal meaning of its words, unless it clearly appears that the will of the testator was different. In case of doubt, that which appears most in accordance with the intention of the testator, according to the tenor of the same will, shall be observed.

A testator can not prohibit the contest of his will in the cases in which there exists nullity specified by law.

SECTION THIRD.—*Form of wills.*

ART. 676. Wills may be ordinary or special.

Ordinary wills may be holographic, open, or closed.

ART. 677. Military and maritime wills and those executed in foreign countries are considered special.

ART. 678. A will is called holographic when the testator writes it in his own hand in the form and with the requisites mentioned in article 688.

ART. 679. A will is open whenever the testator expresses his last will in the presence of the persons who must authenticate the act, they being informed of its provisions.

ART. 680. A will is closed when the testator, without revealing his last will, declares that it is contained in the instrument which he presents to the persons who are to authenticate the act.

ART. 681. The following can not be witnesses to wills:

1. Women, with the exception of the provisions of article 701.
2. Males under age, with the same exception.
3. Persons who are not residents or domiciled in the place of the execution, with the exception of the cases excepted by law.
4. Blind persons and those totally deaf and dumb.
5. Persons who do not understand the language of the testator.
6. Persons of unsound mind.

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7. Persons who have been condemned for the crimes of forgery of public or private instruments, for perjury, and those suffering the penalty of civil interdiction.

8. The clerks, amanuenses, servants, or relatives within the fourth degree of consanguinity or second of affinity of the notary who authenticates the will.

ART. 682. Neither can the heirs and legatees named in an open will, nor the relatives of the same within the fourth degree of consanguinity or second of affinity, be witnesses thereto.

There are not included in this prohibition the legatees and their relatives when the legacy is of some personal property or of a sum of small importance compared with the amount of the estate.

ART. 683. In order that a witness may be declared disqualified, it is necessary that the reason of his disqualification existed at the time of the execution of the will.

ART. 684. The presence of two interpreters, designated by the testator to translate his provision into Spanish, is required for making a will in a foreign language. The will must be written in the two languages.

ART. 685. The notary and two of the witnesses who authenticate the will must be acquainted with the testator, and should they not know him he shall be identified by two witnesses who are acquainted with him and are known to the notary and to the attesting witnesses. The notary and the witnesses shall also assure themselves that in their opinion the testator has the legal capacity required to make a will.

Witnesses authorizing a will without the attendance of a notary, in the cases of articles 700 and 701, are under the same obligation of being acquainted with the testator.

ART. 688. Should it not be possible to identify the person of the testator in the manner prescribed in the preceding article, this circumstance shall be stated by the notary or by the witnesses in a proper case, mentioning the documents which the testator may present for such purpose and giving a personal description of the same.

If the will should be contested for such a cause, the burden of proving the identity of the testator is on the person supporting its validity.

ART. 687. Any will, in the execution of which, the formalities, respectively established in this chapter, have not been observed, shall be void.

SECTION FOURTH.—*Holographic wills.*

ART. 688. Holographic wills can only be executed by persons of age.

In order that this will may be valid, it must be drafted on stamped paper, corresponding to the year of its execution, and be written in its entirety and signed by the testator, giving the year, month, and day of its execution.

If it should contain words erased, corrected, or interlined, the testator must mention them over his signature.

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Foreigners may execute holographic wills in their own language.

ART. 689. Holographic wills shall be placed in a protocol, being presented for this purpose to the judge of first instance of the last domicile of the testator, or to the one of the place where he died, within five years, counted from the day of his death. Without this requisite it shall not be valid.

ART. 690. The person with whom such will may have been deposited must present it to the court as soon as he receives notice of the death of the testator, and should he not do so within the ten following days, he shall be liable for the losses and damages which may be caused by the delay.

It may also be presented by any person who may have an interest in the will as heir, legatee, executor, or in any other capacity whatsoever.

ART. 691. After the holographic will has been presented and the death of the testator has been proven, the judge shall open it, if it should be in a closed cover, shall rubricate, together with the clerk, all the leaves and shall prove its identity through three witnesses who are acquainted with the handwriting and signature of the testator, and who depose that they have no reasonable doubt that the will was written and signed by the testator's own hand.

In the absence of competent witnesses, or if those examined have any doubts, and provided the judge considers it proper, he may employ handwriting experts for the purpose of comparison.

ART. 692. For carrying out the proceedings mentioned in the foregoing article, there shall be summoned as soon as possible, the surviving spouse, if there is one, the legitimate ascendants and descendants of the testator, and in the absence of all these, the brothers and sisters.

If these persons do not reside within the judicial district, or their existence is unknown, or being minors or incapacitated persons without legitimate representation, the department of public prosecution shall be cited.

The persons cited may be present at the observance of such proceedings and may make, at the time, verbally, the proper observations with regard to the authenticity of the will.

ART. 693. If the judge considers that the identity of the will has been proven, he shall order that it be placed in the protocol, together with the proceedings, in the registries of the proper notary, who shall give to the interested parties the copies or authenticated copies which may be proper. In other cases he shall refuse to place it in the protocol.

Whatever the decision of the judge may be it shall be carried out, notwithstanding objection, the rights of the persons interested to enforce it in the proper suit being reserved.

SECTION FIFTH.—*Open wills.*

ART. 694. An open will shall be executed before a notary, qualified to act at the place of its execution, and three competent witnesses who

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can see and understand the testator and of whom one, at least, must know how and be able to write.

From this rule shall only be excepted the cases expressly mentioned in this section.

ART. 695. The testator shall express his last will to the notary and to the witnesses. After the will has been drafted in accordance with the same, stating the place, year, month, day, and hour of its execution, it shall be read aloud in order that the testator may declare if it is in accordance with his wishes. If so, it shall be signed immediately by the testator and by the witnesses who can do so.

Should the testator declare that he does not know how, or is not able to sign, one of the attesting witnesses or another person shall do so for him at his request, the notary certifying thereto. This shall also be done if any one of the witnesses can not sign.

The notary shall always state that in his judgment the testator has the legal capacity required to execute the will.

ART. 696. When the testator, who intends to make an open will, presents his testamentary provisions in writing, the notary shall draft the will in accordance with the same, and shall read it aloud in the presence of the witnesses, in order that the testator may declare if its contents are the expression of his last will.

ART. 697. A person who is absolutely deaf shall read his will himself; if he does not know how or can not do so he shall designate two persons to read it in his name, always in the presence of the witnesses and of the notary.

ART. 698. If the testator is blind, the will shall be read twice, once by the notary, in accordance with the provisions of article 695, and the other time in the same manner by one of the witnesses or by any other person designated by the testator.

ART. 699. All the formalities mentioned in this section shall take place in a single act, and no interruption shall be allowed, except such a one as may be caused by a momentary incident.

The notary shall certify, at the end of the will, that all said formalities have been complied with and that he is acquainted with the testator or with the witnesses of identification in a proper case.

ART. 700. If the testator is in imminent danger of death, the will may be executed before five competent witnesses without the necessity of a notary.

ART. 701. In case of an epidemic, the will may also be executed without the intervention of a notary, before three witnesses over 16 years of age, male or female.

ART. 702. In the cases of the two foregoing articles, the will shall be written, when possible; otherwise the will shall be valid, even though the witnesses do not know how to write.

ART. 703. The will, executed in accordance with the provisions of the three preceding articles, shall be void if two months should have

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elapsed from the time the testator was out of danger of death or the epidemic ceased.

When the testator dies within said period, the will shall also be void, if within three months after his death application is not made to the court of competent jurisdiction in order that the will may be reduced to a public instrument, whether it was executed in writing or verbally.

ART. 704. Wills executed without the authentication of a notary shall be void if they are not afterwards reduced to a public instrument and placed in the protocol in the manner prescribed by the law of civil procedure.

ART. 705. When an open will is declared void by reason of non-compliance with the formalities established for each case, the notary who may have authenticated it shall be liable for the losses and damages incurred if the fault arises from his bad faith or from inexcusable negligence or ignorance.

SECTION SIXTH—*Closed wills.*

ART. 706. A closed will may be written by the testator or by any other person, at his request, on common paper, giving the place, day, month, and year of its execution.

If the testator writes it in person, he shall rubricate all the sheets and affix his signature at the end, after mentioning all the words corrected, erased, or interlined.

Should another person write it, at his request, the testator shall put his full signature on all the sheets and at the foot of the will.

If the testator does not know how or can not sign, another person shall do so for him and rubricate every sheet, at his request, stating the cause of the testator's inability.

ART. 707. In the execution of a closed will, the following formalities shall be observed:

1. The paper on which the will is drafted shall be placed in a closed and sealed envelope in such a manner that the former can not be extracted without breaking the seal.

2. The testator shall appear with the will closed and sealed, or shall close and seal it at the time in the presence of the notary who is to authenticate it and of five competent witnesses, of whom three, at least, must be able to sign.

3. The testator shall declare, in the presence of the notary and of the witnesses, that the envelope he presents contains his will, stating if it is written, signed, and rubricated by him at the foot, or if written by another, and signed by him at the end and on all of its leaves, or if, because he does not know how or can not sign, another person has done it for him, at his request.

4. On the wrapper of the will, the notary shall draft the proper memorandum of its execution, specifying the number and marks of the seals with which it is closed, and certifying that the said formalities have

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been observed, to his acquaintance with the testator or to the identification of his person, in the manner prescribed in articles 685 and 686, and to the testator having, in his judgment, the necessary legal capacity to execute a will.

5. After the memorandum has been drafted and read it shall be signed by the testator and by the witnesses who know how to sign, and the notary shall authenticate it with his mark and signature.

If the testator does not know how or can not sign, one of the attesting witnesses or any other person designated by the former shall do so in his name.

6. This circumstance shall also be stated in the memorandum, as well as the place, hour, day, month, and year of the execution.

ART. 708. Blind persons and those who do not know how or can not read can not execute a closed will.

ART. 709. The deaf and dumb and those who can not speak, but who are able to write, may execute a closed will, the following being observed:

1. The will must be written entirely and signed by the testator, stating the place, day, month, and year.

2. On presenting it, the testator shall write on the outside of the envelope, in the presence of the notary and of five witnesses, that said envelope contains his will and that it is written and signed by him.

3. Immediately after what is written by the testator, the memorandum of execution shall be drafted, the notary certifying that the provisions of the foregoing number have been observed, as well as the provisions of article 707, in so far as may be applicable to the case.

ART. 710. After the closed will has been authenticated, the notary shall deliver it to the testator, after placing in the private protocol a certified copy of the memorandum of execution.

ART. 711. The testator may keep the closed will in his possession or intrust it to the custody of a person in whom he has confidence, or deposit it in the hands of the authenticating notary for safe-keeping in his archives.

In the last case, the notary shall give a receipt to the testator, and shall enter in his private protocol, in the margin or immediately after the copy of the memorandum of the execution, that the will remains in his possession. Should the testator subsequently withdraw it he shall sign a receipt immediately after said memorandum.

ART. 712. The notary or a person having in his possession a closed will shall present it to the judge of competent jurisdiction as soon as he learns of the death of the testator.

Should he not do so within ten days, he shall be liable for the losses and damages caused by his negligence.

ART. 713. A person who, with malice, does not present the closed will, which may be in his possession, within the period fixed in the second paragraph of the foregoing article, shall, besides incurring the

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liability mentioned therein, lose all right to the inheritance, if entitled to it by reason of being an heir *ab intestato* or as a testamentary heir or legatee.

The same penalty shall be incurred by those who maliciously abstract the closed will from the residence of the testator or of the person who has it in custody or on deposit, and by those concealing, tearing, or rendering it useless in any other manner whatsoever, without prejudice to the proper crimimal liability.

ART. 714. For the opening and placing in a protocol of a closed will the provisions of the law of civil procedure shall be observed.

ART. 715. A closed will, in the execution of which the formalities prescribed in this section have not been observed, shall be void, and the notary who authenticates it shall be liable for the losses and damages which may arise, if it is proven that the fault arose from malice, negligence, or inexcusable ignorance on his part. It shall be valid, however, as a holographic will, if it is written in full and signed by the testator and has furthermore the other conditions required for such wills.

SECTION SEVENTH.—*Military wills.*

ART. 716. In time of war, soldiers in the field, volunteers, hostages, prisoners, and other persons in the army or following the same may execute their wills before any officer having at least the rank of captain.

This provision is applicable to members of an army in a foreign country.

Should the testator be sick or wounded, he may execute it before the chaplain or physician attending him.

If he is with a detachment, before the person in command, even if he be a noncommissioned officer.

In all the cases of this article the presence of two competent witnesses shall always be necessary.

ART. 717. The persons mentioned in the preceding article may also execute a closed will before a *comisario de guerra*,* who shall discharge in such case the duties of a notary, the provisions of articles 706 et seq. being observed.

ART. 718. Wills executed in accordance with the two foregoing articles must be forwarded as soon as possible to the general headquarters and by the latter to the secretary of war.

The secretary, should the testator have died, shall forward the will to the judge of the last domicile of the deceased, and, should he not know it, to the senior judge of Madrid, in order that he may officially cite the heirs and other persons interested in the succession. The latter shall request that it be reduced to a public instrument and be protocoled in the manner prescribed by the Code of Civil Procedure.

Should the will be closed, the judge shall officially open it, in the manner prescribed in said law, after citing and with the intervention of

*An inspector and auditor connected with the paymaster's department.

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the department of public prosecution, and, after having opened it, shall inform the heirs and other persons concerned of its contents.

ART. 719. The wills mentioned in article 716 shall lapse four months after the testator has ceased to be in campaign.

ART. 720. During a battle, assault, engagement, and, generally, in all imminent danger of an action of war, a military will may be executed verbally before two witnesses.

But this will shall be void if the testator is saved from the danger in view of which it was made.

Even though he is not saved, the will shall be void if not formally established by the witnesses before the auditor of war or a judicial official following the army, the subsequent proceedings being in accordance with the manner prescribed in article 718.

ART. 721. If the military will should be closed, the provisions of articles 706 and 707 shall be observed, but it shall be executed before the officer and two witnesses required by article 716 for an open will, all of them being required to sign the memorandum of the execution, as well as the testator, if he is able to do so.

SECTION EIGHTH.—*Maritime wills.*

ART. 722. Wills, either open or closed, of persons on board a ship during a sea voyage shall be executed in the following manner:

When the vessel is a man-of-war, before the paymaster or the person discharging his duties, in the presence of two competent witnesses who can see and understand the testator. The captain of the vessel or the person taking his place shall, furthermore, countersign it.

On merchant vessels, the captain or the person taking his place shall authenticate the will in the presence of two competent witnesses.

In either case the witnesses shall be selected from the passengers, if there are any; but one of them at least must be able to sign, and he shall do so for himself and for the testator, if the latter does not know how or can not sign.

If the will is an open one, the provisions of article 695 shall, furthermore, be observed; and if closed, the provisions of section 6 of this chapter, with the exception of what relates to the number of witnesses and to the intervention of a notary.

ART. 723. The will of the paymaster of a man-of-war and of the captain of a merchant vessel shall be authenticated by those who are to substitute them in their office, the provisions contained in the preceding article being observed for the other proceedings.

ART. 724. Open wills executed on the high seas shall be preserved by the commander or captain, and they shall be mentioned in the log book.

A similar mention shall be made of holographic and closed wills.

ART. 725. Should a ship arrive at a foreign port where there is a diplomatic or consular agent of Spain, the commander of the man-of-war or the captain of the merchant vessel shall deliver to said agent a

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copy of the open will, or of the memorandum of the execution of the closed one, and of the entry made in the log book.

The copy of the will or of the memorandum must bear the same signatures as the original, if the persons who signed it are alive and on board; otherwise it shall be authenticated by the paymaster or captain who may have received the will, or the one discharging his duties, and those on board who took part in the will shall also sign.

The diplomatic or consular agent shall have the proceedings of the delivery reduced to writing, and after the copy of the will or of the memorandum of its execution, if the will is closed, has been closed and sealed, he shall forward it with a copy of the record in the log book, through the proper channel, to the Secretary of the Navy, who shall order it deposited in the archives of his Department.

The commander or captain who delivers it shall obtain from the diplomatic or consular agent a certificate of having done so and shall enter it in the log book.

ART. 726. When the vessel, either a man-of-war or a merchantman, arrives at the first port of the kingdom, the commander or captain shall deliver the original will, closed and sealed, to the local maritime authority, with a copy of the entry made in the log book, and should the testator have died, a certificate proving it.

The delivery shall be proven in the manner prescribed in the foregoing article, and the maritime authority shall forward the papers, without delay, to the Secretary of the Navy.

ART. 727. If the testator should have died and the will is an open one, the Secretary of the Navy shall proceed in the manner prescribed in article 718.

ART. 728. When the will has been executed by a foreigner, on a Spanish vessel, the Secretary of the Navy shall forward the will to the Secretary of State in order that it may be transmitted, in the proper manner, through diplomatic channels.

ART. 729. If the will is a holographic one and the testator should die during the voyage, the commander or captain shall take possession of the will for the purpose of keeping it in a safe place, mentioning this fact in the log book, and shall deliver the same to the local maritime authority, in the manner and for the purposes prescribed in the foregoing article, when the vessel arrives at the first port of the kingdom.

The same shall be done should it be a closed will, if the testator had it in his possession at the time of his death.

ART. 730. Open and closed wills, executed in accordance with the provisions of this section, shall be void after four months, counted from the day on which the testator landed at a place where he could make a will in the ordinary form.

ART. 731. Should there be danger of shipwreck, the provisions of article 720 shall be applicable to the crews and passengers of men-of-war or merchantmen.

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SECTION NINTH.—*Wills made in foreign countries.*

ART. 732. Spaniards may make wills out of the national territory, conforming to the formalities established by the laws of the country in which they may be.

They may also make wills on the high seas, during their passage on a foreign vessel, in accordance with the laws of the country to which the vessel belongs.

They may also make a holographic will, in accordance with article 688, without the requisite of stamped paper, even in countries the laws of which do not admit such wills.

ART. 733. Joint wills, prohibited by article 669, shall not be valid in Spain, executed by Spaniards in a foreign country, even though the laws of the country where they may have been executed authorize them.

ART. 734. Spaniards who are in a foreign country may also execute their wills, open or closed, before a diplomatic or consular agent of Spain residing at the place of their execution.

In these cases said agents shall act as notaries, and all the formalities established by sections fifth and sixth of this chapter shall be respectively observed, the condition of domicile of the witnesses, however, not being necessary.

ART. 735. The diplomatic or consular agent shall forward a copy of the open will, or of the memorandum of execution of the closed will, authenticated with his signature and seal, to the department of state for deposit in its archives.

ART. 736. The diplomatic or consular agent with whom a Spaniard may have deposited his holographic or closed will shall forward it to the department of state upon the death of the testator, with the certificate of death.

The department of state shall have the notice of the death published in the *Gaceta de Madrid*, in order that the persons interested in the inheritance may obtain the will and have it protocoled in the manner prescribed.

SECTION TENTH.—*Revocation and inefficiency of wills.*

ART. 737. All testamentary provisions are essentially revocable, even though the testator should state in the will his wish or resolution not to revoke them.

All clauses annulling future provisions shall be considered as not existing, as well as those in which the testator may order that the revocation of the will should not be valid unless made with certain words or marks.

ART. 738. A will can not be revoked, either wholly or in part, except with the formalities required for making it.

ART. 739. A prior will is revoked by law by a subsequent and perfect will if the testator does not state in the latter his wish of leaving the former in force, in whole or in part.

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Nevertheless, a prior will recovers its force if the testator afterwards revokes the subsequent one and expressly declares his wish that the former be valid.

ART. 740. The revocation shall be effective, even though the second will becomes void by reason of the incapacity of the heir or of the legatees designated therein, or by the renunciation of the former or of the latter.

ART. 741. The acknowledgment of an illegitimate child does not lose its legal force, even though the will in which it was made may be revoked.

ART. 742. A closed will found in the domicile of the testator with the cover torn, or the seals broken, or the signatures authenticating it effaced, erased, or corrected is presumed to be revoked.

This will, however, shall be valid should it be proven that this damage occurred without the wish or knowledge of the testator, or should the latter be insane; but, if the cover is found torn and the seals broken, it shall be necessary furthermore to prove the authenticity of the will in order that it may be valid.

If the will is found in the possession of another person, it shall be understood that the damage was caused by such person, and it shall not be valid unless its authenticity is proven if the cover is torn or the seals broken; and if both are intact, but with the signatures effaced, erased, or corrected, the will shall be valid unless it be proven that the instrument was delivered in this condition by the testator himself.

ART. 743. Wills shall become void or testamentary provisions without effect, in whole or in part, only in the cases expressly prescribed in this code.

CHAPTER SECOND.

Inheritances.

SECTION FIRST.—*Capacity to succeed by will or in the absence thereof.*

ART. 744. All persons not disqualified by law may succeed by will or in the absence thereof.

ART. 745. The following are disqualified to succeed:

1. Abortive infants, by such being understood those who are not included among those described in article 30.

2. Associations or corporations not permitted by law.

ART. 746. Church and church chapters, provincial deputations and provinces, municipal councils and municipalities, hospitals and charitable institutions, and those for public instruction, associations authorized or recognized by law, and all other judicial persons may acquire by will, in accordance with the provisions of article 38.

ART. 747. Should the testator dispose of the whole or of part of his property for suffrages and pious works for the benefit of his soul, and does it in an indeterminate manner and without specifying its application, the executors shall sell the property and distribute its proceeds,

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giving one-half of it to the diocesan to be employed in said suffrages and to the expenses and necessities of the church, and the other half to the proper civil governor for the charitable institutions of the domicile of the deceased, and, in their absence, for those of the province.

ART. 748. A designation made in favor of a public institution under a condition or imposing a charge thereon shall be valid only if approved by the government.

ART. 749. Provisions made in favor of the poor in general, without the designation of persons or of towns, shall be understood as limited to those of the domicile of the testator at the time of his death should it not clearly appear that his will was otherwise.

The classification of the poor and the distribution of the property shall be made by the person designated by the testator, in the absence of such person by the executors, and should there be none, by the curate, the mayor, and the municipal judge, who shall decide by a majority of votes any doubts which may arise.

The same shall be done if the testator has disposed of his property in favor of the poor of a certain parish or town.

ART. 750. Every provision in favor of an unidentified person shall be void unless in some way the person may become identified.

ART. 751. A provision made generically in favor of the relatives of the testator is understood as made in favor of those nearest in degree.

ART. 752. Testamentary provisions made by the testator during his last illness in favor of the priest who took his confession during the same, of the relatives of the latter within the fourth degree, or of his church, chapter, community, or institute shall not be valid.

ART. 753. Neither shall the testamentary provisions of the ward in favor of his guardian, made before the final accounts of the latter have been approved, be valid, even though the testator should die after their approval.

However, the provisions made by the ward in favor of the guardian when the latter is his or her ascendant, descendant, brother, sister, or spouse shall be valid.

ART. 754. The testator can not dispose of the whole or a part of his estate in favor of the notary who authenticates his will, or of the wife, relatives, or connections of the latter within the fourth degree, with the exception mentioned in article 682.

This prohibition is applicable to the witnesses to an open will executed with or without a notary.

The provisions of this article are also applicable to the witnesses and persons before whom special wills are executed.

ART. 755. A testamentary provision in favor of an incapacitated person, though concealed under the form of a contract involving a valuable consideration or made in the name of a third person, shall be void.

ART. 756. The following are disqualified to succeed by reason of unworthiness:

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1. Parents who have abandoned their children or prostituted their daughters or made attempts against their chastity.

2. He who has been sentenced in a trial for having made attempts against the life of the testator, his spouse, descendants, or ascendants.

If the offender should be an heir by force of law, he shall lose his legal portion.

3. He who has accused the testator of a crime for which the law imposes an exemplary punishment, when the accusation is declared libelous.

4. The heir of age who, knowing of the violent death of the testator, has not denounced it to the courts within a month, unless the latter had already acted ex officio.

This prohibition shall cease in cases in which, according to law, there is no obligation to make an accusation.

5. A person sentenced at a trial for adultery with the wife of the testator.

6. He who, by threats, fraud, or violence, forces the testator to make a will or to change it.

7. He who, by the same means, prevents another from making a will or from revoking one already made, or who forges, conceals, or changes a subsequent one.

ART. 757. The reasons for unworthiness shall produce no effect if the testator had knowledge thereof at the time of making the will, or if, having been informed of them subsequently, has condoned the same in a public instrument.

ART. 758. In order to determine the qualification of the heir or legatee, the time of the death of the person whose succession is in question shall be taken into consideration.

In cases Nos. 2, 3, and 5 of article 756, it shall be necessary to wait until the final judgment is rendered, and in No. 4, until the month fixed for the complaint has elapsed.

If the institution or legacy should be conditional, the time for the fulfillment of the condition shall, furthermore, be taken into consideration.

ART. 759. The heir or legatee who should die before the condition is fulfilled, even though he survives the testator, transmits no rights whatsoever to his heirs.

ART. 760. Any person disqualified to succeed, who, in contravention of the prohibition of the preceding articles, has entered into possession of the hereditary property shall be obliged to return it together with its increases and with all the fruits and rents he may have collected.

ART. 761. If the person, excluded from the inheritance by reason of incapacity, should be a child or descendant of the testator and should have children or descendants, the latter shall acquire his rights to the legal portion.

A person excluded shall not enjoy the usufruct and administration of the property thus inherited by his children.

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ART. 762. No action can be instituted for a declaration of incapacity after five years have elapsed from the time the incapacitated person took possession of the inheritance or legacy.

SECTION SECOND.—*Designation of heirship.*

ART. 763. A person who has no heirs by force of law may dispose by will of all his property or part of it in favor of any person qualified to acquire it.

A person, who having heirs by force of law, may dispose of his property only in the manner and with the limitations established in section 5 of this chapter.

ART. 764. A will shall be valid, even though it does not contain the designation of an heir, or if the latter does not include all of the property, and even though the person designated does not accept the inheritance or is disqualified to inherit.

In such cases, the testamentary provisions, made in accordance with the laws, shall be complied with, and the remainder of the estate shall go to the legal heirs.

ART. 765. The heirs designated, without a designation of shares, shall inherit share and share alike.

ART. 766. A voluntary heir, who should die before the testator, the person disqualified to inherit, and the person who renounces the inheritance, do not transmit any rights to their heirs, excepting the provisions of articles 761 and 857.

ART. 767. The statement of a false reason for the designation of an heir or for the appointment of a legatee shall be considered as not written, unless it appears from the will that the testator would not have made such designation or legacy, had he had knowledge of the falsity of such reason.

The statement of a reason contrary to law, even though true, shall also be considered as not written.

ART. 768. An heir to whom a certain and specified thing is left shall be considered a legatee.

ART. 769. When the testator appoints some heirs individually and others collectively, as when he says, "I designate as my heirs N and N, and the children of N," those collectively appointed shall be considered as individually appointed, unless it appears in a clear manner that the will of the testator was otherwise.

ART. 770. If the testator should designate his brothers or sisters, and he has some of full blood and others on the side of the father or mother only, the inheritance shall be divided as in cases of intestacy.

ART. 771. When the testator appoints to the succession a person and his children, they shall all be understood as designated simultaneously and not successively.

ART. 772. The testator shall designate the heir by his name and surname, and when there are two having the same names, he must state some circumstance by which the one designated may be identified.

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Even though the testator may have omitted the name of the heir, should he designate him in such manner that there can be no doubt as to what person has been designated, the designation shall be valid.

ART. 773. An error in the name, surname, or qualities of the heir shall not vitiate the designation when it may be possible, in any other manner, to know with certainty who is the person appointed.

If among persons of the same name and surname there is equality of circumstances, and the latter are such as not to permit the identification of the person who is designated, none of them shall be an heir.

SECTION THIRD.—*Substitution.*

ART. 774. The testator may substitute one or more persons in the place of the heir or heirs designated in case they die before him or do not wish or can not accept the inheritance.

Simple substitution, without expressing cases, includes the three mentioned in the foregoing paragraph unless the testator has ordered otherwise.

ART. 775. Parents and other ascendants may appoint substitutes for their descendants under 14 years of age, of both sexes, in case they should die before said age.

ART. 776. The ascendant may appoint a substitute for the descendant over 14 years of age who, in accordance to law, has been declared disqualified on account of being of unsound mind.

The substitution referred to in the foregoing paragraph shall be without effect by the will of the incapacitated person made during a lucid interval or after having recovered his reason.

ART. 777. The substitutions referred to in the two foregoing articles, when the substitute has heirs by force of law, shall only be valid in so far as they do not prejudice the legitimate rights of the latter.

ART. 778. Two or more persons may be substituted for a single one, or a single person for two or more heirs.

ART. 779. If the heirs designated in unequal portions should be substituted for each other, they shall have in the substitution the same portions as in the designation, unless it clearly appears that the will of the testator was otherwise.

ART. 780. The substitute shall be subject to the same charges and conditions as imposed upon the person designated, unless the testator has expressly disposed to the contrary, or when the charges or conditions are merely personal with regard to the heir designated.

ART. 781. Substitutions in trust, by virtue of which the heir is intrusted with preserving and transmitting to a third person the whole or part of the inheritance, shall be valid and effective, provided they do not go beyond the second degree, or that they are made in favor of persons living at the time of the death of the testator.

ART. 782. Substitutions in trust can never impair the legal portion. Should they fall upon the third destined to the betterment, they can be made in favor of the descendants only.

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ART. 783. In order that appointments to substitutions in trust may be valid they must be expressly made.

A fiduciary is bound to deliver the inheritance to the *cestui que trust* without any other deductions than those arising from legitimate expenses, credits, and improvements, except in case the testator has disposed otherwise.

ART. 784. The *cestui que trust* shall acquire the right to the succession from the time of the death of the testator, even though he dies before the fiduciary. The right of the former shall pass to his heirs.

ART. 785. The following shall produce no effect:

1. Substitutions in trust not made in an express manner, either by giving them this name or by imposing upon the substitute the absolute obligation of delivering the property to a second heir.

2. Provisions containing perpetual prohibitions to alienate, and even a temporary one, not within the limits fixed in article 781.

3. Those imposing upon the heir the charge of paying a certain income or pension to several persons successively beyond the second degree.

4. Those, the object of which is to leave to a person the whole or part of the inheritance in order that he may apply or invest it, according to secret instructions given him by the testator.

ART. 786. The nullity of a substitution in trust shall not prejudice the validity of the designation nor the heirs first designated; the *cestui que trust* clause shall simply be considered as not written.

ART. 787. The provision by which the testator leaves the whole or a part of the inheritance to a person and the usufruct to another shall be valid. If several persons are designated to enjoy the usufruct, not simultaneously, but successively, the provisions of article 781 shall be observed.

ART. 788. A provision imposing upon an heir the obligation of periodically investing specified sums in charitable works, as dowries for poor maidens, pensions for students, or in favor of the poor, or for any charitable institution, or of public instruction, shall be valid under the following conditions:

If the charge is imposed on real property and is temporary, the heir or heirs may dispose of the encumbered estate, the lien not being removed until its record is canceled.

If the charge is perpetual, the heir may capitalize it and invest the capital at interest in a first and sufficient mortgage.

The capitalization and investment of the capital shall be made with the intervention of the civil governor of the province after hearing the department of public prosecution.

In any case, if the testator should not have established an order for the administration and application of the legacy for charity, the proper administrative authority, according to law, shall do it.

ART. 789. All that is prescribed in this chapter with regard to heirs shall also be applicable to legatees.

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SECTION FOURTH.—*Designation of heirs; and conditional legacies or for a term.*

ART. 790. Testamentary provisions, either by universal or special title, may be made conditionally.

ART. 791. The conditions imposed upon heirs and legatees shall be governed by the rules established for conditional obligations in all that is not prescribed in this section.

ART. 792. Impossible conditions and those contrary to law and good morals shall be considered as not imposed and shall not prejudice the heir or legatee in any manner whatsoever, even when the testator disposes otherwise.

ART. 793. The absolute condition of not contracting a first or subsequent marriage shall be considered as not imposed, unless such condition has been imposed on the widower or widow by the deceased spouse, or by the ascendants or descendants of the same.

Nevertheless, usufruct, use, or occupancy, or a pension or personal services may be bequeathed to a person for the time during which he or she remains unmarried or widowed.

ART. 794. A provision made under the condition that the heir or legatee shall make in his will some provision in favor of the testator or of another person shall be void.

ART. 795. A purely compulsory condition imposed upon the heir or legatee must be fulfilled by him when, after the death of the testator, he is informed thereof.

The case is excepted in which the condition has already been fulfilled and therefore can not be carried out anew.

ART. 796. When the condition is casual or mixed, it shall be sufficient if it be fulfilled or complied with at any time during the life or after the death of the testator, unless he has ordered otherwise.

Should it have existed or should it have been fulfilled at the time of the execution of the will and the testator did not know it, it shall be considered as fulfilled.

If he had knowledge thereof, it shall be considered as fulfilled only when of such nature that it can no longer exist or be carried out anew.

ART. 797. The statement of the object of the designation or of the legacy or the application to be given to what has been left by the testator, or the charge imposed by the same, shall not be considered as a condition, unless it appears that such was his will.

What has been left in this manner may be immediately claimed and is transmissible to the heirs who may secure the fulfillment of the orders of the testator and the repayment of what they may have received, with its fruits and interest, should they fail to comply with this obligation.

ART. 798. If, without the fault or a personal act of the heir or legatee, the designation or the legacy referred to in the foregoing article can not be complied with in the exact terms ordered by the testator, it

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shall be fulfilled in a manner as nearly analogous and in conformity with his will as possible.

When the person interested in its fulfillment or nonfulfillment should prevent its compliance without fault or a personal act of the heir or legatee, the condition shall be considered as fulfilled.

ART. 799. Conditions precedent do not prevent the heir or legatee from acquiring their respective rights and transmitting them to their heirs, even before their fulfillment.

ART. 800. If the compulsory condition imposed upon the heir or legatee is a negative one, or of not giving or not doing something, they shall fulfill it by giving security that they will not do or give what was prohibited by the testator, and that in case of contravention they will return what they may have received, with its fruits and interest.

ART. 801. If the heir is designated under a condition precedent, the estate shall be placed in administration until the condition is complied with or until there is a certainty that it can not be fulfilled.

The same shall be done when the heir or legatee should not give the security, in the case of the foregoing article.

ART. 802. The administration referred to in the foregoing article shall be intrusted to the heir or heirs, unconditionally designated, when among them and the conditional heir there exists the right of accretion. The same shall be understood with regard to legatees.

ART. 803. If the conditional heir has no coheirs, or, having them, there does not exist the right of accretion among them, the former shall take charge of the administration upon giving security.

Should he not give it, the administration shall be conferred upon the presumptive heir, also giving security; and should neither of them give security, the court shall appoint a third person to take charge of it, also giving security, which shall be given with the intervention of the heir.

ART. 804. These administrators shall have the same rights and obligations as administrators of the property of an absentee.

ART. 805. A statement of the day or time when the effect of the designation of heir or legatee shall begin or cease shall be valid.

In either case the legal successor shall be considered as designated until the period fixed arrives or expires. But in the first case the latter shall not enter into possession of the property until after having given sufficient security with the intervention of the heir designated.

SECTION FIFTH.—*Legal portions.*

ART. 806. A legal portion is that part of the property which the testator can not dispose of because the law has reserved it for specified heirs, called, on that account, heirs by force of law.

ART. 807. Heirs by force of law are:

1. Legitimate children and descendants, with regard to their legitimate parents and ascendants.

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2. In the absence of the foregoing, the legitimate parents and ascendants, with regard to their legitimate children and descendants.

3. The widower or widow, the natural children legally acknowledged, and the father or the mother of the latter, in the manner and extent established in articles 834, 835, 836, 837, 840, 841, 842, and 846.

ART. 808. The legal portion of legitimate children and descendants is composed of two-thirds of the hereditary estate of the father and of the mother.

Nevertheless, the latter may dispose of one of the two thirds forming the legal portion in order to apply it as a betterment to their legitimate children and descendants.

The remaining third shall be at their free disposal.

ART. 809. The legal portion of the parents or ascendants is constituted by one half of the hereditary estate of the children and descendants. The latter may unrestrictedly dispose of the other half, with the exception of what is established in article 836.

ART. 810. The legal portion reserved to the parents shall be divided between both equally; if one of the parents should have died, the surviving one shall receive the whole.

If the testator leaves neither a father nor a mother, but ascendants in the same degree on the paternal or maternal side, the estate shall be divided equally between both lines. If the ascendants should be of a different degree, it shall wholly belong to the nearest ones of either line.

ART. 811. The ascendant who inherits property from his descendant, acquired by the latter for a good consideration from another descendant or from a brother or sister, is obliged to reserve the property he may have acquired by force of law in favor of the relatives within the third degree belonging to the line from which such property originated.

ART. 812. Ascendants succeed, to the exclusion of all other persons, to things given by them to their children or descendants who died without issue when the very objects donated are included in the inheritance. Should they have been alienated, they shall succeed to all the actions which the donee may have with regard to them, and to the value should they have been sold, or to the property by which they were substituted if they were bartered or exchanged.

ART. 813. A testator can not deprive the heirs of his legal portion except in the cases expressly fixed by law.

Neither can he impose upon it any burden, condition, or substitution of any kind whatsoever, with exception of what has been prescribed with regard to the usufruct of the surviving spouse.

ART. 814. The preterition of one or of all of the heirs, by force of law, in a direct line, either living at the time of the execution of the will or born after the death of the testator, shall void the designation of heir; but the legacies and betterments shall be valid, in so far as they are not illegal.

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The preterition of the widower or widow does not annul the designation, but the person omitted shall preserve all the rights granted him by articles 834, 835, 836, and 837 of this Code.

If the omitted heirs by force of law die before the testator, the designation shall be valid.

ART. 815. The heir by force of law to whom the testator has left, for any reason whatsoever, less than the legal portion due him may demand the fulfillment thereof.

ART. 816. All renunciations or compromises with regard to a future legal portion between the persons owing it and their heirs by force of law are void, and the latter may claim it upon the death of the former; but they must bring into the collation whatever they may have received by reason of the renunciation or compromise.

ART. 817. Testamentary provisions impairing the legal portion of heirs by force of law shall be reduced on petition of the same in so far as they are illegal or excessive.

ART. 818. In order to determine the legal portion, the value of the property remaining on the death of the testator, after deducting all debts and charges, without including therein those imposed in the will, shall be taken into consideration.

To the net value of the hereditary estate shall be added the value of all the collationable gifts bestowed by the said testator at the time they were made.

ART. 819. Gifts made to children which are not betterments shall be considered as part of their legal portion.

Gifts made to strangers shall be charged to the free part of which the testator may have been able to dispose by his last will.

In so far as they be illegal or exceed the portion which can be disposed of, they shall be reduced according to the rules of the following articles.

ART. 820. After the legal portion has been fixed in accordance with the two foregoing articles, the reduction shall be made as follows:

1. Gifts shall be respected in so far as the legal portion can be covered, reducing or annulling, if necessary, the legacies made in the will.

2. The reductions of the latter shall be made pro rata, without any distinction whatsoever.

If the testator has ordered that a certain legacy be paid in preference to others, the former shall not suffer any reduction, until after the latter have been applied in full to the payment of the legal portion.

3. If the legacy consists of a usufruct or life annuity, the value of which may be considered greater than that of the portion which can be disposed of, the heirs by force of law may choose between complying with the testamentary provision or delivering to the legatee the part of the inheritance of which the testator could freely dispose.

ART. 821. If the legacy subject to reduction should consist of an estate which can not be well divided, it shall go to the legatee, if the reduction does not absorb one-half of its value, and otherwise, to the

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heirs by force of law; but one shall pay the other what may be due them in cash.

A legatee having a right to a legal portion may retain the entire estate, provided its value does not exceed the amount of the portion which can be disposed of and the share pertaining to him by way of legal portion.

ART. 822. If the heirs or legatees do not wish to make use of the rights granted them in the foregoing article, any of them who did not have such right may exercise it; should he not wish to do so, the estate shall be sold at public auction at the instance of any of the persons interested.

SECTION SIXTH.—*Betterments* (*mejoras*).

ART. 823. The father or the mother may dispose of one of the two thirds destined as the legal portion in favor of one or more of their children or descendants.

This portion is called a betterment (*mejora*).

ART. 824. No other incumbrances can be imposed upon the betterment than those which may be established in favor of the heirs by force of law or their descendants.

ART. 825. No gift by contract *inter vivos*, either simple or for a valuable consideration, in favor of children or descendants who may be heirs by force of law shall be considered as a betterment if the donor has not expressly declared his intention to that effect.

ART. 826. The promise to give or not to give a betterment made in a public instrument of a marriage agreement shall be valid.

Any provision of the testator in contravention of the promise shall not have any effect.

ART. 827. The betterment, even if made with the delivery of the property, shall be revokable, unless it has been made in a marriage agreement or by a contract involving a valuable consideration made with a third person.

ART. 828. A bequest or legacy made by the testator to one of his children or descendants shall not be considered as a betterment, except when the testator has expressly declared such to be his intention or when it can not be included in the portion he can freely dispose of.

ART. 829. A betterment may be given in a specified thing. If its value exceeds the third destined to the betterment and the share of the legal portion corresponding to the person who receives the betterment, the latter must pay the difference in cash to the other persons interested.

ART. 830. The authority to give betterments can not be delegated to a third person.

ART. 831. Notwithstanding the provisions of the foregoing article, in marriage agreements it shall be valid to stipulate that if one of the spouses dies intestate, the widower or widow, who has not contracted a new marriage, may distribute, according to his or her prudent judgment, the property of the deceased, and give betterments in the same

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to the children in common, without prejudice to the legal portions and to the betterments given by the deceased while alive.

ART. 832. If the betterment should not have been granted in a specified thing it shall be paid out of the property of the inheritance, there being observed, in so far as possible, the rules established by articles 1061 and 1062, in order to procure equality of the heirs in the distribution of the property.

ART. 833. The legitimate child or descendant receiving a betterment may renounce the inheritance and accept the betterment.

SECTION SEVENTH.—*Rights of the surviving spouse.*

ART. 834. The widower or widow who, on the death of his or her spouse, is not divorced, or should be so by the fault of the deceased spouse, shall have a right to a portion in usufruct equal to that corresponding by way of legal portion to each of the legitimate children or descendants who have not received any betterment.

If one legitimate child or descendant only survives, the widower or widow shall have the usufruct of the third destined to the betterment, the former preserving the direct ownership until, on the death of the surviving spouse, the title is merged in him.

If the spouses should be separated by a suit for divorce, the result of the suit shall be awaited.

If there should have been a pardon or a reconciliation between the divorced spouses, the surviving one shall preserve his or her rights.

ART. 835. The hereditary portion, allotted in usufruct to the widowed spouse, must be taken from the third of the property destined to the betterments of the children.

ART. 836. Should the testator not leave any descendants, but only ascendants, the surviving spouse shall have a right to the third of the estate in usufruct.

This third shall be taken from the free half, the testator being allowed to dispose of the ownership of the same.

ART. 837. If the testator should leave neither legitimate ascendants nor descendants, the surviving spouse shall be entitled to one-half of the estate also in usufruct.

ART. 838. The heirs may satisfy the surviving spouse for his or her part of usufruct, assigning to him or her a life annuity, or the proceeds from specified property, or a sum in cash, making a mutual agreement, and, in the absence thereof, by virtue of a judicial mandate.

Until this has been done all the property of the inheritance shall be liable for the payment of the part of the usufruct pertaining to the surviving spouse.

ART. 839. In case of the survival of the children of two or more marriages, the usufruct pertaining to the widowed spouse of the second marriage shall be taken from the third at the free disposal of the parents.

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SECTION EIGHTH.—*Rights of illegitimate children.*

ART. 840. When the testator leaves legitimate children or descendants, and natural children, legally acknowledged, each of the latter shall have a right to one-half of the portion pertaining to each of the legitimate children who have not received any betterment, provided it can be included in the third which may be freely disposed of, from which it must be taken, after the burial and funeral expenses have been deducted.

The legitimate children may pay the portion pertaining to the natural ones in cash, or in other property of the estate, according to just rules.

ART. 841. Should the testator not leave any legitimate children or descendants, but legitimate ascendants, the acknowledged natural children shall have a right to one-half of the part of the estate which can be freely disposed of by the testator.

This is understood without prejudice to the legal portion of the surviving spouse, in accordance with article 836; so that when the spouse survives with acknowledged natural children, what may be lacking to make up their legal portion shall be awarded to them as a naked property right during the life of the spouse.

ART. 842. When the testator leaves no legitimate descendants or ascendants, the acknowledged natural children shall be entitled to a third of the inheritance.

ART. 843. The rights granted natural children by the foregoing article are transmitted on their death to their legitimate descendants.

ART. 844. The hereditary portion of children legitimized by royal concession shall be equal to that established by law in favor of acknowledged natural children.

ART. 845. Illegitimate children who have not the character of natural children shall be entitled to support only.

The obligation of the person who is to support them shall be transmitted to his or her heirs, and shall continue until said children attain their majority, and in case they should be incapacitated, while the incapacity lasts.

ART. 846. The right of succession which the law grants natural children extends reciprocally in similar cases to the natural father or mother.

ART. 847. The gifts which the natural child may have received during its life from its father or mother shall be charged to its legal portion.

Should they exceed the third which can be freely disposed of, they shall be reduced in the manner prescribed in article 817 et seq.

SECTION NINTH.—*Disinheritance.*

ART. 848. Disinheritance can only take place for one of the reasons expressly fixed by law.

ART. 849. Disinheritance can only be made in a will mentioning therein the legal reason on which it is based.

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ART. 850. The proof of the truth of the reason for disinheritance shall be established by the heirs of the testator should the disinherited person deny it.

ART. 851. Disinheritance made without a statement of the reason, or for a reason the truth of which, if contradicted, should not be proven or which should not be one of those mentioned in the four following articles, shall annul the designation of heirship in so far as it prejudices the person disinherited, but the legacies, betterments, and other testamentary provisions, in so far as they do not prejudice said legal portion, shall be valid.

ART. 852. Sufficient causes for disinheritance are, in the respective cases, those of disqualification to succeed by reason of unworthiness, mentioned in Nos. 1, 2, 3, 5, and 6 of article 756.

ART. 853. Besides those specified in Nos. 2, 3, 5, and 6 of article 756 for the disinheritance of children and descendants, legitimate as well as natural, the following shall be sufficient causes:

1. For having refused, without legal cause, support to the father or ascendant who disinherits him.

2. For having used personal violence or words of gross insult against the testator.

3. If the daughter or granddaughter has become a prostitute.

4. For having been condemned for a crime punished by the penalty of civil interdiction.

ART. 854. Besides the causes mentioned in Nos. 1, 2, 3, 5, and 6 of article 756, the following shall also be sufficient causes for disinheriting parents or ascendants, either legitimate or natural:

1. The loss of the parental authority for the causes mentioned in article 169.

2. The refusal of support to the children or descendants without legal cause.

3. An attempt of one of the parents against the life of the other, should they not have become reconciled.

ART. 855. Besides the causes mentioned in Nos. 2, 3, and 6 of article 756, the following shall also be sufficient cause for disinheriting a spouse:

1. Those which are a cause for divorce according to article 105.

2. Those which are a cause for the loss of the parental authority in accordance with article 169.

3. The refusal to support the children or the other spouse.

4. An attempt against the life of the spouse making the will, should there not have been a reconciliation.

In order that the causes which are reasons for divorce may also be causes for disinheritance, it is necessary that the spouses do not live under the same roof.

ART. 856. A subsequent reconciliation of the offender with the offended deprives the latter of the right to disinherit and renders a disinheritance already made without effect.

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ART. 857. The children of the person disinherited shall take his or her place and shall preserve the rights of heirs by force of law with regard to the legal portion, but the disinherited parent shall not have the usufruct nor the administration of the property of the same.

SECTION TENTH.—*Legacies and bequests.*

ART. 858. A testator may charge with legacies and bequests, not only his heir, but also the legatees.

The latter shall not be liable for the charge only to the extent of the value of the legacy.

ART. 859. When the testator charges one of the heirs with a legacy the latter only shall be obliged to fulfill the same.

Should he not charge any one in particular, all shall be liable in the same proportion in which they may be heirs.

ART. 860. The person who is obliged to deliver the legacy shall be liable, in case of eviction, if the thing is undetermined and is designated only in class or kind.

ART. 861. The legacy of another's property, when the testator knew at the time of bequeathing it that it was not his, is valid. The heir is obliged to acquire it for delivery to the legatee; and should it not be possible for him to do so to pay the latter its just value.

The proof that the testator knew that the thing was another's lies with the legatee.

ART. 862. If the testator did not know that the thing he bequeathed was another's the legacy shall be void.

But it shall be valid should he acquire it after the execution of the will.

ART. 863. A legacy made to a third person of a thing belonging to the heir or to a legatee shall be valid, and they, on accepting the succession, must deliver the thing bequeathed or its just value, with the limitation established in the following article.

The provisions of the foregoing paragraphs are understood without prejudice to the legal portion of the heirs by force of law.

ART. 864. When the testator, heir, or legatee have only a part or a right in the thing bequeathed, the legacy shall be understood as limited to said part or right, unless the testator expressly declares that he bequeathed the thing in its entirety.

ART. 865. A legacy of things which are not marketable is void.

ART. 866. The legacy of a thing, which at the time of the execution of the will already belonged to the legatee, even though another person has some right thereto, shall not have any effect.

If the testator expressly orders that the thing should be freed from this right or charge the legacy shall be valid in that respect.

ART. 867. Should the testator bequeath something which is pledged or mortgaged for the security of a recoverable debt, the payment of the latter shall be made by the heir.

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If the legatee should pay said debt because the heir has not done so, the former shall be subrogated in the place and rights of the creditor to proceed against the heir.

Any other charge, perpetual or temporary, for which the thing bequeathed is liable, passes with it to the legatee, but in either case the income and interest earned up to the time of the death of the testator are a lien on the inheritance.

ART. 868. If the thing bequeathed should be subject to usufruct, use, or occupancy, the legatee must respect said rights until they are legally extinguished.

ART. 869. The legacy shall have no effect:

1. If the testator changes the thing bequeathed in such manner that it does not retain either the form or the denomination it previously had.

2. If the testator alienates, for any consideration or reason whatsoever, the thing bequeathed or a part thereof, it being understood, in the latter case, that the bequest is without effect only with regard to the part alienated. If, after the alienation, the thing should revert to the ownership of the testator, even though it were by reason of the nullity of the contract, the bequest shall not be valid, after such fact, excepting the case in which the reacquisition takes place on account of an agreement of resale.

3. If the thing bequeathed is entirely lost during the life of the testator or after his death, without the fault of the heir. Nevertheless, the person obliged to pay the legacy shall be liable for the eviction, if the thing bequeathed should not have been determined in kind in accordance with the provisions of article 860.

ART. 870. The legacy of a credit against a third person or of a release or waiver of a debt of the legatee shall be valid only with regard to that part of the credit or debt existing at the time of the death of the testator.

In the first case, the heir shall perform by assigning to the legatee all the actions he may have against the debtor.

In the second, by giving the legatee a receipt, should he request one.

In both cases the legacy shall include the interest which may be due the testator at the time of his death on the credit or debt.

ART. 871. The legacy referred to in the foregoing article is void if the testator, after having made it, should sue the debtor for the payment of his debt, even if said payment should not have been made at the time of the death.

Only the right of pledge is waived by the legacy made to the debtor of a thing pledged.

ART. 872. The generic legacy of waiver or release of debts includes those existing at the time of the execution of the will, and not subsequent ones.

ART. 873. A legacy made to a creditor shall not be considered as a payment of his credit, unless the testator should so expressly declare.

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In such case, the creditor shall have a right to collect the excess of the credit or of the legacy.

ART. 874. In alternative legacies the provisions for obligations of the same kind shall be observed, excepting the modifications arising from the express will of the testator.

ART. 875. A legacy of generic personal property shall be valid even though there may not be things of the same kind in the estate.

A legacy of undetermined real estate shall be valid only if there is such property in the estate.

The heir shall have the right of option, and shall perform by giving a thing which may not be either of inferior or superior quality.

ART. 876. Whenever the testator expressly leaves an option to the heir or to the legatee, the former may give or the latter may select what he may consider best.

ART. 877. If the heir or legatee can not make the choice, in case it has been granted him, his right shall pass to the heirs; but a choice once made shall be irrevocable.

ART. 878. If the thing bequeathed belonged to the legatee at the date of the will the legacy shall be void, even though it may have been alienated subsequently.

If the legatee has acquired it for a good consideration after said date he can claim nothing for it; but if it should have been acquired for a valuable consideration, he may demand of the heir an indemnity for what he may have given to acquire it.

ART. 879. A legacy for education lasts until the legatee is of age.

That for support lasts during the life of the legatee, if the testator does not dispose otherwise.

If the testator has not fixed any sum for said legacies, it shall be fixed in accordance with the position and condition of the legatee and the amount of the inheritance.

If the testator was, during his life, in the habit of giving the legatee a certain sum of money or other things by way of support, the same amount shall be considered as bequeathed unless it is greatly disproportionate with the amount of the estate.

ART. 880. If a periodical pension, or a fixed annual, monthly, or weekly sum is bequeathed, the legatee may demand the first payment upon the death of the testator, and the following ones at the beginning of each period, without any right of reimbursement, even though the legatee should die before the expiration of the period begun.

ART. 881. A legatee acquires a right to the pure and simple legacies from the death of the testator, and transmits it to his heirs.

ART. 882. If the legacy is of a specific and determined thing, belonging to the testator, the legatee acquires the ownership thereof from the death of the former, as well as the fruits or income due, but not those due and unpaid before said death.

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The thing bequeathed shall, from the same instant, be at the risk of the legatee, who, therefore, shall bear its loss or impairment, as well as being benefited by its increase or improvement.

ART. 883. The thing bequeathed shall be delivered, with all its accessories and in the condition in which it may have been on the death of the testator.

ART. 884. If the bequest should not be of a specific and determined thing, but generic or of quantity, its fruits and interest from the death of the testator shall belong to the legatee if the testator should have expressly so ordered.

ART. 885. The legatee can not take possession of the thing bequeathed of his own authority, but must request its delivery and possession of the heir or of the executor, when the latter should be authorized to give it.

ART. 886. The heir shall deliver the thing bequeathed if he is able to do so, and does not perform by paying its value.

Legacies in cash must be paid in specie, even though there be none in the estate.

The necessary expenses for the delivery of the thing bequeathed shall be for the account of the estate, but without prejudice to the legal portion.

ART. 887. If the assets of the estate should not be sufficient to cover all the legacies, their payment shall be made in the following order:

1. Remunerative legacies.
2. Legacies of specified and determined things forming a part of the estate.
3. Legacies which may have been declared by the testator as preferred.
4. Those for support.
5. Those for education.
6. All others pro rata.

ART. 888. If the legatee can not or should not wish to accept the bequest, or said bequest for any reason should not be valid, it shall be merged into the whole of the estate, excepting cases of substitution and rights of accretion.

ART. 889. The legatee can not accept a part of the legacy and repudiate the other part, should the latter be onerous to him.

Should he die before accepting the legacy, leaving several heirs, one of them may accept and another repudiate the part pertaining to him in the legacy.

ART. 890. A legatee of two legacies, one of which is onerous, can not renounce the latter and accept the former. If both are either onerous or gratuitous, he is free to accept all of them or repudiate the one he wishes.

The heir who is at the same time a legatee may renounce the inheritance and accept the legacy, or renounce the latter and accept the former.

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ART. 891. If the entire estate is distributed in legacies, the debts and charges of the same shall be charged to the legatees, pro rata in proportion to their shares, unless the testator should have provided otherwise.

SECTION ELEVENTH.—*Executors.*

ART. 892. A testator may appoint one or more executors.

ART. 893. A person who is not qualified to bind himself can not be an executor.

A married woman may be an executrix with the consent of her husband, which shall not be necessary should she be legally separated from him.

A minor can not be an executor, not even with the authorization of the father or of the guardian.

ART. 894. Executors may be universal or special.

In any case executors may be appointed either severally, successively, or jointly.

ART. 895. Should the executors be appointed severally, only those acts performed by all of them together, or by one of them legally authorized by the others, shall be valid; and, in case of disagreement, when the act has been agreed to by the majority.

ART. 896. In cases of extreme urgency, one of the several executors may, under his personal liability, perform the acts which may be necessary, giving notice thereof immediately to the others.

ART. 897. If the testator should not clearly establish the appointment of joint executors nor determine the order in which they are to discharge their duties, it shall be understood that they have been appointed severally, and they shall discharge their duties in the manner prescribed in the two foregoing articles.

ART. 898. Executorship is a voluntary office, and it shall be understood as accepted by the person appointed thereto should he not excuse himself within six days following that on which he has received notice of his appointment, or if he was already aware thereof, during the six days following that on which he had knowledge of the death of the testator.

ART. 899. An executor who accepts this office is bound to act; but he may renounce it, alleging a cause which is sufficient in the sound discretion of the judge.

ART. 900. The executor who does not accept the office, or renounces it without sufficient cause, shall lose what the testator may have left him, excepting always his right to the legal portion.

ART. 901. Executors of wills shall have all the powers expressly conferred upon them by the testator and which are not contrary to law.

ART. 902. Should the testator not have specially determined the powers of the executors they shall have the following:

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1. To dispose and pay the suffrages and funeral expenses of the testator in accordance with the provisions made by him in his will and, in their absence, according to the customs of the town.

2. To pay, with the knowledge and consent of the heir, the cash legacies.

3. To carefully see to the execution of the other provisions of the will and maintain, when just, its validity in and out of court.

4. To take the necessary precautions for the preservation and custody of the property, with the intervention of the heirs who may be present.

ART. 903. Should there not be in the estate cash enough for the payment of the funeral expenses and legacies, and the heirs should not contribute from their own funds thereto, the executors shall sell the personal property; and should the proceeds therefrom not be sufficient, the real property shall be sold, with the intervention of the heirs.

If a minor, absentee, corporation, or public institution should have any interest in the estate, the sale of the property shall take place with the formalities prescribed by law for such cases.

ART. 904. The executor for whom the testator has not fixed a term must fulfill his office within a year, counted from his acceptance or from the conclusion of the litigation which may have been instituted with regard to the validity or nullity of the will or of any one of its provisions.

ART. 905. Should the testator desire to extend the legal term, he must expressly fix the time of the extension. Should he not have fixed it, it shall be understood that the term is extended for one year.

If after the expiration of this extension the will of the testator should not yet have been complied with, the judge may grant another term for the time which may be necessary, in view of the circumstances of the case.

ART. 906. The heirs and legatees may, by common consent, extend the term of the executorship for the time they may consider necessary; but if the agreement is only that of a majority the extension can not exceed one year.

ART. 907. The executors shall submit an account of their administration to the heirs.

Should they have been appointed, not in order to deliver the property to determined heirs, but to invest or distribute the same in the manner ordered by the testator in the cases allowed by law, they shall submit their accounts to the judge.

Any provision of the testator in contravention of this article shall be void.

ART. 908. Executorship is a gratuitous office. The testator, nevertheless, may assign the executors the remuneration he may consider proper; all without prejudice to the right they may have to collect what may be proper for their work in the division, or for any other professional services.

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If the testator bequeathes or designates jointly any remuneration for the executors, the shares of those who do not accept the office shall accrue to those who may discharge it.

ART. 909. An executor can not delegate the office unless he has express authority therefor from the testator.

ART. 910. Executorship terminates by the death, incapacity, renunciation, or removal of the executor, and by the lapse of the term fixed by the testator, by law, and, in a proper case, by the persons interested.

ART. 911. In the cases of the foregoing article, and in case the executor has not accepted the office, the execution of the will of the testator shall devolve upon the heirs.

CHAPTER THIRD.

Intestate succession.

SECTION FIRST.—*General provisions.*

ART. 912. Legitimate succession takes place—

1. If a person dies without a will, or with a void will, or which may have lost its validity subsequently.

2. When the will does not contain the designation of heirship to all or part of the property, or does not dispose of all that belongs to the testator. In such case legitimate succession shall take place only with regard to the property of which the testator has not disposed.

3. When the condition imposed for the designation of heirship is lacking, or if the heir dies before the testator, or repudiates the inheritance, without having a substitute, and there being no right of accretion.

4. When the heir designated is disqualified to succeed.

ART. 913. In the absence of testamentary heirs, the law gives the inheritance, according to the rules hereafter set forth, to the legitimate and natural relatives of the deceased, to the widower or widow, and to the State.

ART. 914. The provisions relating to disqualification to succeed by will are also applicable to intestate successions.

SECTION SECOND.—*Relationship.*

ART. 915. The nearness of relationship is determined by the number of generations. Each generation forms one degree.

ART. 916. A series of degrees forms the line, which may be direct or collateral.

A direct line is one constituted by a series of degrees among persons descending one from the other.

A collateral line is that constituted by a series of degrees among persons not descending one from the other, but proceeding from a common trunk.

ART. 917. The direct line is either descending or ascending.

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The former joins the head of the family with those descending from him.

The latter joins a person with those from whom he descends.

ART. 918. In the lines as many degrees are counted as there are generations or persons, deducting the progenitor.

In the direct line the ascent is made only to the trunk. Thus the son is one degree removed from the father, two from the grandfather, and three from the great-grandfather.

In the collateral line, the ascent is made up to the common trunk, and then a descent to the person with whom the computation is made. Therefore the brother is two degrees removed from the brother, three from the uncle, brother of his father or mother, four from the first cousins, and so forth.

ART. 919. The computation referred to in the foregoing article governs in all matters, except in those which have relation to the obstacles to canonical marriage.

ART. 920. Whole blood relationship is the relation in the father's and mother's line at the same time.

ART. 921. In inheritances the relative nearest in degree excludes the most remote excepting the right of representation in proper cases.

Relatives who are in the same degree shall inherit in equal shares, with the exception of what is provided in article 949 with regard to whole blood relationships.

ART. 922. Should there be several relatives in the same degree and one or more of them should not wish to or could not succeed, his portion shall accrue to the others of the same degree, reserving the right of representation in a proper case.

ART. 923. If the inheritance is repudiated by the nearest relative should there be one only, or by all the nearest relatives, designated by law, should there be several, those of the following degree shall inherit in their own right, without being able to represent those repudiating the inheritance.

SECTION THIRD.—*Representation.*

ART. 924. The right which all the relatives of a person have to succeed him in all the rights which he would have if alive, or which he might have inherited, is called the right of representation.

ART. 925. The right of representation shall always take place in the direct descending line, but never in the ascending.

In the collateral line it shall take place only in favor of the children of brothers or sisters, whether they be of the whole or half blood.

ART. 926. Whenever the inheritance is taken by representation, the division of the estate shall be made *per stirpes;* thus the representative or representatives do not inherit any more than that which the person they represent would inherit if alive.

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ART. 927. When children of one or more brothers or sisters of the deceased survive, they shall succeed the latter by representation, if uncles also survive. But if they alone survive they shall inherit in equal shares.

ART. 928. The right of representing a person is not lost by the renunciation of the inheritance.

ART. 929. A living person can not be represented except in cases of disinheritance or incapacity.

CHAPTER FOURTH.

Order of succession according to diversity of lines.

SECTION FIRST.—*Descending direct line.*

ART. 930. Succession pertains, in the first place, to the descending direct line.

ART. 931. Legitimate children and their descendants succeed the parents and other ascendants, without distinction of sex or age, even though they spring from different marriages.

ART. 932. The children of the deceased shall always inherit from him in their own right, dividing the inheritance in equal shares.

ART. 933. The grandchildren and other descendants shall inherit by right of representation, and if one of them should die, leaving several heirs, the portion pertaining to him shall be divided among the latter in equal parts.

ART. 934. Should any children and descendants of other deceased children survive, the former shall inherit in their own right, and the latter by right of representation.

SECTION SECOND.—*Ascending direct line.*

ART. 935. In the absence of legitimate children and descendants of the deceased, his ascendants shall inherit from him, to the exclusion of collaterals.

ART. 936. The father and mother, if living, shall inherit share and share alike.

Should one of them only survive, he or she shall succeed to the son's entire estate.

ART. 937. In the absence of father or mother the ascendants nearest in degree shall inherit.

Should there be several of equal degree belonging to the same line, they shall divide the inheritance *per capita;* should they be of different lines but of equal degree, one-half shall go to the paternal and the other half to the maternal ascendants. In each line the division shall be made *per capita.*

ART. 938. The provisions of the two preceding articles are understood without prejudice to what is prescribed in articles 811 and 812, which is applicable to intestate as well as testamentary successions.

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SECTION THIRD.—*Acknowledged natural children.*

ART. 939. In the absence of legitimate descendants and ascendants, the natural children legally acknowledged, and those legitimized by royal concession, shall succeed to the entire estate of the deceased.

ART. 940. If, together with the natural or legitimized children, there should survive descendants of another deceased natural or legitimized child, the former shall succeed in their own right and the latter by right of representation.

ART. 941. The hereditary rights granted by the two preceding articles to a natural or legitimized child shall be transmitted upon its death to its descendants, who shall inherit by right of representation from their deceased grandparent.

ART. 942. In case legitimate descendants and ascendants survive, the natural and legitimized children shall receive from the inheritance only the portion granted them by articles 840 and 841.

ART. 943. A natural and legitimized child has no right to succeed *ab intestato* the legitimate children and relatives of the father or mother who has acknowledged it; nor shall such children or relatives inherit from the natural or legitimized child.

ART. 944. If the acknowledged natural or legitimized child should die without issue, either legitimate or acknowledged by it, the father or mother who acknowledged it shall succeed to its entire estate, and if both acknowledged it and are alive, they shall inherit from it share and share alike.

ART. 945. In the absence of natural ascendants the natural and legitimized children shall be succeeded by their natural brothers or sisters, according to the rules established for legitimate brothers or sisters.

SECTION FOURTH.—*Successions of collaterals and of spouses.*

ART. 946. In the absence of the persons included in the three preceding sections, the collateral relatives and the spouses shall inherit in the order established in the following articles.

ART. 947. Should there be only brothers or sisters of the whole blood, they shall inherit in equal shares.

ART. 948. Should brothers survive with nephews, children of brothers of the whole blood, the former shall inherit *per capita* and the latter *per stirpes.*

ART. 949. Should brothers of the whole blood survive with brothers of half blood, the former shall receive a share in the inheritance double that of the latter.

ART. 950. In case there are only brothers of half blood, some on the father's and some on the mother's side, all shall inherit equal shares without distinction of property.

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ART. 951. Children of brothers of half blood shall succeed *per capita* or *per stirpes*, according to the rules established for brothers or sisters of the whole blood.

ART. 952. In the absence of brothers or sisters and of nephews, children of the same, be they or not of the whole blood, the surviving spouse, not separated by a final decree of divorce, shall succeed to the entire estate of the deceased.

ART. 953. Should there be brothers or sisters or children of brothers or sisters, the surviving widow or widower shall have a right to receive the part of the inheritance in usufruct assigned him or her in article 837.

ART. 954. Should there be neither brothers or sisters nor children of brothers or sisters nor a surviving spouse, the other collateral relatives shall succeed to the estate of the deceased.

The succession of the latter shall follow without distinction of lines or preference among them by reason of the whole blood.

ART. 955. The right to inherit *ab intestato* shall not extend beyond the sixth degree of relationship in the collateral line.

SECTION FIFTH.—*Succession by the State.*

ART. 956. In the absence of persons having a right to succeed in accordance with the provisions of the preceding sections, the State shall inherit, the property being destined to charitable institutions and those for gratuitous instruction, in the following order:

1. Municipal charitable institutions and free schools of the domicile of the deceased.
2. Those of either class in the province of the deceased.
3. Charitable and educational institutions of a general character.

ART. 957. The rights and obligations of charitable and educational institutions, in the case of the preceding articles, shall be the same as those of the other heirs.

ART. 958. In order that the State may take possession of the property of the inheritance, a previous judicial declaration of heirship must be made awarding the property to the same because of the absence of legitimate heirs.

CHAPTER FIFTH.

Provisions common to inheritance by or without will.

SECTION FIRST—*Precautions to be adopted when the widow remains pregnant.*

ART. 959. When the widow believes that she has been left pregnant, she must notify those having in the inheritance rights of such a character that they will disappear or be reduced by the birth of a posthumous child.

ART. 960. The persons interested, referred to in the preceding article, may request the municipal judge or the judge of first instance, when there is one, to order the proper precautions taken in order to prevent a supposititious parturition or to accept the child born as viable, when, in truth, it is not so.

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The judge shall take care that the measures he orders taken shall not be offensive either to the modesty or to the liberty of the widow.

ART. 961. Whether the notice referred to in article 959 has been given or not, when the time of the parturition approaches, the widow must notify the persons interested thereof. The latter shall have a right to appoint a person in whom they have confidence in order that he may ascertain the fact of the delivery.

If the person appointed should be rejected by the widow, the judge shall appoint a physician or a woman.

ART. 962. The omission of these formalities shall not prejudice the legitimacy of the parturition, which, if impugned, may be proven by the mother or by the child legally represented.

The action to impugn on the part of those having such right shall prescribe after the periods fixed in art. 113.

ART. 963. When the husband has acknowledged in an instrument, either public or private, the fact of the pregnancy of his wife she shall be excused from giving the notice required by art. 959, but she must comply with the provisions of art. 961.

ART. 964. A widow who remains pregnant, even though she be rich, must be given support from the estate, taking into consideration the portion thereof which may pertain to the posthumous child, should it be born and be viable.

ART. 965. During the time intervening, until the parturition arrives, or until the fact is established that it will not take place, either on account of a miscarriage or because the maximum time for the gestation has passed, the security and administration of the property shall be provided for in the manner established for compulsory testamentary proceedings.

ART. 966. The division of the inheritance shall be suspended until the parturition or miscarriage takes place, or the lapse of time shows the widow was not pregnant.

However, an administrator may pay the creditors after a judicial mandate.

ART. 967. After the delivery or miscarriage has taken place, or after the period of gestation has elapsed, the administrator of the estate shall terminate his office and shall give an account of his management to the heirs or to their legal representatives.

SECTION SECOND.—*Property to be set apart.*

ART. 968. Besides the reservation imposed by art. 811, the widower or widow contracting a second marriage shall be obliged to set apart for the children and descendants of the former the ownership of all the property he may have acquired from the deceased spouse by will, by intestate succession, by gift, or for any other good consideration, but not his or her half of the conjugal profits.

ART. 969. The provision of the preceding article is applicable to property which has been acquired for the considerations mentioned therein, by the widower or widow from any of the children of the first

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marriage, and to that received from the relatives of the deceased by reason of personal considerations for the same.

Art. 970. The obligation to set apart shall cease when the children of a marriage, of age and who may have a right to the estate, should expressly renounce it, or when things given or left by the children to their father or mother, with a knowledge that they had married a second time, are in question.

ART. 971. The reservation shall also cease if on the death of the father or mother who contracted a second marriage no legitimate children or descendants of the first marriage survive.

ART. 972. Notwithstanding the obligation to set apart, the father or mother, married a second time, may grant betterments in the property to be set apart to any of the children or descendants of the first marriage, in accordance with the provisions of article 823.

ART. 973. If the father or mother should not have made use in whole or in part of the right granted him or her in the foregoing article, the legitimate children and descendants of the first marriage shall succeed to the property to be set apart in accordance with the rules prescribed for succession in the descending line, even if, by virtue of a will, he or she should have unequally inherited from the first deceased spouse or should have renounced or repudiated his or her inheritance.

The child, justly disinherited by the father or by the mother, shall lose all right to the property set apart, but should it have legitimate children or descendants the provisions of article 857 shall be observed.

ART. 974. Alienations of real property to be set apart, made by the surviving spouse before contracting a second marriage, shall be valid with the obligation to secure, from the moment of said marriage, the value of the same to the children and descendants of the first marriage.

ART. 975. Alienations of real property to be set apart, which may have been made by the widower or widow after contracting a second marriage, shall be valid only if on his or her death no legitimate children or descendants of the first marriage survive, without prejudice to the provisions of the mortgage law.

ART. 976. Alienations of personal property, made before or after contracting a second marriage, shall be valid, always reserving the obligation to pay an indemnity.

ART. 977. A widower or widow, on contracting a new marriage, shall have an inventory made of all the property subject to be set apart, enter in the registry of property that such real estate is subject to be set apart in accordance with the provisions of the mortgage law and shall have the personal property appraised.

ART. 978. A widower or widow, on remarrying, is also bound to secure by a mortgage:

1. The restitution of the personal property, not alienated, in the condition in which it was at the time of the death of the deceased, should it be paraphernal, or arising from unappraised dowry; or its value, if arising from an appraised dowry.

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2. The payment of the damages caused, or which may be caused by his or her fault or neglect.

3. The return of the sums which may have been received for the personal property alienated or the delivery of the value it had at the time of the alienation, if the latter should have been made for a good consideration.

4. The value of the real estate validly alienated.

ART. 979. The provisions of the preceding article for the case of a second marriage shall also be observed in third and subsequent marriages.

ART. 980. The obligation to set apart, imposed in the preceding articles, shall be applicable to the widower or widow, who, even though he or she does not contract a new marriage, may subsequently have an acknowledged natural child, or one judicially declared as such.

Said obligation shall be effective from the date of the birth of said child.

SECTION THIRD.—*The right of accretion.*

ART. 981. In legitimate successions the portion of the person who repudiated the inheritance shall always accrue to the coheirs.

ART. 982. In order that a testamentary succession in the right of accretion may take place it is necessary—

1. That two or more persons are designated to the same inheritance or to the same portion thereof without a special designation of shares.

2. That one of the persons designated dies before the testator or renounces the inheritance or is disqualified to receive it.

ART. 983. It shall be understood that a designation has been made by portion only in case the testator may have expressly assigned a share to each heir.

The phrase "one-half to each or in equal parts," or any other which, though designating an aliquot part, should not fix it numerically or in such manner as to make each of them the owner of an estate severally, does not exclude the right of accretion.

ART. 984. The heirs, to whom the inheritance accrues, shall succeed to all the rights and obligations which the one who did not wish or could not receive it would have had.

ART. 985. Among heirs by force of law the right of accretion shall take place only when the part which can be freely disposed of is left to two or more of them, or to any one of them, and to a stranger.

Should the part repudiated be the legal portion, the other coheirs shall succeed to it in their own right, and not by the right of accretion.

ART. 986. In testamentary successions, when the right of accretion is not proper, the rejected portion of the heir designated, for whom no substitute has been appointed, shall pass to the legal heirs of the testator who shall receive it with the same charges and obligations.

ART. 987. The right of accretion shall also be proper between the legatees and the usufructuaries in the manner established for heirs.

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SECTION FOURTH.—*Acceptance and repudiation of the inheritance.*

ART. 988. Acceptance and repudiation of the inheritance are acts entirely voluntary and free.

ART. 989. The effects of the acceptance and repudiation shall always retroact to the moment of the death of the person whose property is inherited.

ART. 990. Acceptance or repudiation of the inheritance can not take place, either partially, for a certain period, nor conditionally.

ART. 991. No person can accept nor repudiate an inheritance, without being certain of the death of the person from whom he is to inherit and of his rights to the inheritance.

ART. 992. Any person having the free disposal of his property may accept or repudiate an inheritance.

An inheritance left to minors or incapacitated persons may be accepted in the manner prescribed in number 10 of article 269. Should the guardian accept by himself, the acceptance shall be considered as made under benefit of inventory.

The acceptance of an inheritance left to the poor shall pertain to the persons designated by the testator to classify and distribute the property, and, in their absence, to those mentioned in article 749, and it shall also be understood as accepted under benefit of inventory.

ART. 993. The legal representatives of associations, corporations, and institutions qualified to acquire may accept the inheritance left to the same; but in order to repudiate it they require judicial approval, after hearing the Department of Public Prosecution.

ART. 994. Public official establishments can neither accept nor repudiate inheritances without the approval of the Government.

ART. 995. A married woman can not accept nor repudiate an inheritance, except with the permission of her husband, or, in his absence, with the approval of the judge.

In the latter case, the property of the conjugal partnership already existing shall not be liable for the debts of the estate.

ART. 996. The deaf and dumb, who may know how to read and write, shall accept or repudiate the inheritance personally or through an attorney. Should they not be able to read or write, their guardian shall accept it under benefit of inventory, subject to the provisions of article 218 with regard to said disability.

ART. 997. The acceptance and repudiation of an inheritance once made are irrevocable, and cannot be impugned except when they are tainted from any of the defects which annul the consent, or when an unknown will appears.

ART. 998. Inheritances may be accepted purely and simply or under benefit of inventory.

ART. 999. Pure and simple acceptances may be express or implied.

An express acceptance is one made in a public or private instrument.

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Implied acceptance is one made by acts which necessarily imply a wish to accept, or acts which no one should have a right to execute except in the capacity of an heir.

Acts of mere preservation, or provisional administration, do not imply the acceptance of the inheritance, if, at the same time, the title and character of heir have not been assumed.

ART. 1000. An inheritance is considered as accepted:

1. When the heir sells, gives, or assigns his right to a stranger, to all his coheirs, or to one of them.

2. When the heir renounces it, even gratuitously, for the benefit of one or more of his coheirs.

3. When he renounces it for a consideration in favor of all his coheirs indiscriminately, but if this renunciation should be gratuitous, and the coheirs, in whose favor it is made, are those to whom the portion renounced must accrue, the inheritance shall not be considered as accepted.

ART. 1001. Should the heir repudiate the inheritance to the prejudice of his own creditors, the latter may request the judge to authorize them to accept it in the name of the former.

The acceptance shall be of benefit to the creditors only in so far as it covers the amount of their credits. The excess, should there be any, shall not belong in any case to the renouncer, but shall be awarded to the persons to whom, according to the rules of this code, it may pertain.

ART. 1002. The heirs who have taken or concealed any property of the inheritance lose the right to renounce it and retain only the character of pure and simple heirs without prejudice to the penalties which they may have incurred.

ART. 1003. Through an acceptance, pure and simple, or without benefit of inventory, the heir shall be liable for all the charges on the estate, not only with the property of the same, but also with his own

ART. 1004. No action can be instituted against the heir to compel him to accept or repudiate it until nine days have elapsed from the death of the person whose inheritance is in question.

ART. 1005. Should a third person in interest institute a suit to compel the heir to accept or to repudiate the inheritance, the judge shall fix a period for the latter, not exceeding thirty days, within which he shall declare his intention, warning him that should he not do so the inheritance shall be considered as accepted.

ART. 1006. Upon the death of the heir, without having accepted or repudiated the inheritance, the rights he may have had are transmitted to his heirs.

ART. 1007. Should there be several heirs designated to an inheritance, some of them may accept and some repudiate it. Every one of the heirs shall enjoy the same liberty to accept it purely and simply, or under benefit of inventory.

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ART. 1008. The repudiation of an inheritance shall be made in a public or authentic instrument, or in writing presented to the judge of competent jurisdiction in testamentary or intestate proceedings.

ART. 1009. Any person designated to an inheritance by a will and *ab intestato* and who repudiates it in the first capacity is considered as having repudiated in both characters.

Should he repudiate it as an intestate heir and without having knowledge of his testamentary character, he may yet accept it in the latter capacity.

SECTION FIFTH.—*Benefit of inventory and right to deliberate.*

ART. 1010. Every heir may accept an inheritance under benefit of inventory, even though the testator should have forbidden it.

He may also request the making of the inventory before accepting or repudiating the inheritance, in order to deliberate on this point.

ART. 1011. The acceptance of the inheritance, under the benefit of inventory, may be made before a notary or in a writing before any of the judges of competent jurisdiction in testamentary or intestate proceedings.

ART. 1012. Should the heir referred to in the preceding article be abroad, he may make said declaration before a diplomatic or consular agent of Spain, who may be authorized to discharge the duties of a notary in the place of the execution.

ART. 1013. The declaration referred to in the preceding articles shall not produce any effect whatsoever unless it be preceded or followed by a true and exact inventory of all the property of the estate, made with the formalities and within the periods fixed in the following articles.

ART. 1014. An heir who may have in his possession the property of the estate or a part thereof, and who may wish to make use of the benefit of inventory or of the right to deliberate, shall state this to the judge of competent jurisdiction in testamentary or intestate proceedings, within ten days following that on which he has become aware that he is such an heir, if he resides in the place where the deceased may have died. If he resides outside of it the period shall be thirty days.

In either case the heir must request, at the same time, the making of the inventory and the citation of the creditors and legatees in order that they may be present thereat if they wish to.

ART. 1015. If the heir should not have in his possession the inheritance or a part of it, or has not taken any steps as such heir, the periods fixed in the preceding article shall be counted from the day following that on which the period fixed by the judge for accepting or repudiating the inheritance expires, in accordance with article 1005, or from the day on which he may have accepted it or has acted as heir.

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ART. 1016. With the exception of the cases referred to in the two preceding articles, if no action should have been brought against the heir, he may accept, under the benefit of inventory, or with the right to deliberate while the action to claim the inheritance does not prescribe.

ART. 1017. An inventory shall be begun within the thirty days following the citation of the creditors and legatees and shall be finished within sixty days more.

If, by reason of the property being situated at a long distance, or being very valuable, or for any other sufficient cause, said sixty days should appear insufficient, the judge may extend this period for such a time as he may deem necessary, which can not exceed one year.

ART. 1018. If by the fault or negligence of the heir the inventory is not begun or finished within the periods, and with the formalities prescribed in the preceding articles, it shall be understood that he accepts the inheritance purely and simply.

ART. 1019. An heir, who should have reserved to himself the right to deliberate, must state to the court, within thirty days, counted from the day following that on which the inventory has been concluded, whether he accepts or repudiates the inheritance.

If said thirty days have elapsed without said statement being made it shall be understood that he accepts it purely and simply.

ART. 1020. In any case the judge may, at the instance of an interested person, during the making of the inventory and until the acceptance of the inheritance, provide for the administration and custody of the inheritance, in accordance with the provisions of the law of civil procedure with regard to testamentary proceedings.

ART. 1021. A person who judicially claims an inheritance, which another has had in his possession for more than one year and who should win the suit, shall not be obliged to make an inventory in order to enjoy said benefit, and he shall be liable for the charges on the estate only with the property which may have been delivered to him.

ART. 1022. The inventory made by the heir, who afterwards repudiates the inheritance, shall benefit the substitutes and the intestate heirs, with regard to whom the thirty days for deliberation and in which to make the statement prescribed by article 1019 shall be counted from the day following that on which they received notice of the repudiation.

ART. 1023. The benefit of inventory produces the following effects in favor of the heir:

1. The heir shall not be bound to pay the debts and other charges on the inheritance except in so far as the property of the same may go.

2. He retains against the estate all the rights and actions which he may have had against the deceased.

3. His private property shall not be confused for any purpose whatsoever, to his injury, with the property belonging to the estate.

ART. 1024. The heir shall lose the benefit of inventory:

1. If having knowledge thereof he fails to include in the inventory any of the property, rights, or actions of the inheritance.

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2. If before concluding the liquidation of the debts and legacies he should alienate any property of the estate without judicial authorization, or that of all the persons interested, or if he should not apply the value of what is sold in the manner specified at the time the authorization was granted him.

ART. 1025. During the making of the inventory and the period granted for deliberating the legatees can not demand the payment of their legacies.

ART. 1026. Until all the known creditors and the legatees have been paid, it shall be understood that the estate is under administration.

The administrator, whether it be the heir himself or any other person, shall have, as such, the representation of the estate to exercise all the actions pertaining thereto, and answer all complaints instituted against the same.

ART. 1027. The administrator can not pay the legacies until he has paid all the creditors.

ART. 1028. Should there be a pending suit among the creditors with regard to the preference of their credits, they shall be paid in the order and according to the degree fixed by the final judgment of graduation.

Should no suit be pending among the creditors, those presenting themselves first shall be paid first; but should it appear that one of the known credits is preferred, the payment shall not be made without previous security being given in favor of the creditor having a better right.

ART. 1029. If after the legacies are paid other creditors should appear, the latter shall have a right to make claims against the legatees only in case sufficient property should not remain to pay them.

ART. 1030. If for the payment of credits and legacies the sale of the hereditary estate should be necessary, it shall take place in the manner established by the law of civil procedure with regard to intestate and testamentary proceedings, unless all the heirs, creditors, and legatees come to a different agreement.

ART. 1031. If the hereditary estate should not be sufficient for the payment of the debts and legacies, the administrator shall render an account of his administration to the creditors and legatees who have not been paid in full, and he shall be liable for the damages caused the estate through his fault or negligence.

ART. 1032. After the creditors and legatees are paid, the heir shall have the full enjoyment of the remainder of the estate.

Should the estate have been administered by another person, he shall give an account of his administration to the heir, under the liability imposed by the preceding article.

ART. 1033. The cost of the inventory and the other expenses arising from the administration of the inheritance, accepted under the benefit of inventory, and the defense of its rights, shall be charged to the said estate. The costs which the heir may have been personally adjudged to pay by reason of his deceit or bad faith are excepted.

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The same shall be understood with regard to the costs arising from making use of the right to deliberate, if the heir repudiates the inheritance.

ART. 1034. The private creditors of the heir can not interfere with the operations of the estate, accepted by the latter under benefit of inventory, until the creditors of the same and the legatees have been paid; but they may demand the retention or the attachment of the remainder which may be left the heir.

CHAPTER SIXTH.

Collation and division.

SECTION FIRST.—*Collation.*

ART. 1035. An heir by force of law surviving with others of the same character to a succession must bring into the hereditary estate the property or securities he may have received from the deceased during the life of the same, by way of dowry, gift, or for any good consideration, in order to compute it in fixing the legal portions and in the account of the division.

ART. 1036. Collation shall not take place among heirs by force of law if the donor should have so expressly ordered, or if the donee should repudiate the inheritance, excepting the case in which the gift is to be reduced by reason of illegality.

ART. 1037. What is left by will is not subject to collation, if the testator did not order otherwise, the legal portions in any case being reserved.

ART. 1038. When grandchildren inherit from their grandparents in representation of their parents, surviving with their uncles or cousins, they shall bring to collation all that their parents, if alive, would have been required to bring, even though they may not have inherited it.

They shall also bring to collation whatever they may have received from the testator during his life, unless the testator has disposed otherwise, in which case his will must be respected should it not prejudice the legal portion of the coheirs.

ART. 1039. Parents are not obliged to bring to collation in the inheritance of their ascendants what may have been bestowed as a gift by the latter to their children.

ART. 1040. Neither shall the gifts bestowed upon the spouse of the child be brought to collation, but should they have been made by the parent to both of them conjointly, the child shall be obliged to bring to collation one-half of the thing bestowed as a gift.

ART. 1041. Expenses for support, education, for sickness, even though they be extraordinary, apprenticeship, ordinary equipment, or usual presents are not subject to collation.

ART. 1042. Expenses which may have been incurred by the parents in giving their children a professional or artistic career shall not be

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brought to collation unless the parent so orders or should they prejudice the legal portion; but when it is legal to bring them to collation, the sum which the child would have spent, if it had lived in the house and company of its parents, shall be deducted therefrom.

ART. 1043. The amounts paid by a parent to redeem the children from the lot of soldiers, pay their debts, obtain for them a title of honor, or other similar expenses, shall be brought to collation.

ART. 1044. Wedding presents, consisting of jewels, clothing, and outfit, shall not be reduced as illegal except in so far as they exceed one-tenth or more of the sum which can be disposed of by will.

ART. 1045. The same things bestowed as a gift or given in dowry need not be brought to collation and division, but only the value they had at the time of the gift or dowry, even though they should not have been appraised at the time.

Their subsequent increase or impairment and even their total loss, either casually or culpably, shall be for the account and risk or for the benefit of the donee.

ART. 1046. A dowry or gift, made by both spouses, shall be brought to collation in equal parts in the inheritance of each one of them. That made by one alone shall be brought to collation in his or her inheritance.

ART. 1047. The donee shall receive from the funds of the inheritance an amount so much less than the sum he may already have received, the coheirs receiving the equivalent in property of the same nature, class, and quality, in so far as possible.

ART. 1048. If the provisions of the preceding article can not be executed, if the property bestowed as a gift consisted of real estate, the coheirs shall have a right to be equalized in cash, or in securities, at the rate at which they are quoted; and should there be in the inheritance neither cash nor securities which can be quoted, other property shall be sold at public auction in so far as necessary.

If the property bestowed as a gift is personal property, the coheirs shall have only a right to be equalized in other personal property of the inheritance at its just value at their option.

ART. 1049. The fruits of and interest on the property, subject to collation, are not due the funds of the inheritance, except from the day on which the succession is opened.

In order to regulate the same, the rents of and interest on the hereditary property of the same kind as that brought to collation shall be taken into consideration.

ART. 1050. If a question should arise among the coheirs as to the obligation to bring or with regard to the objects which are to be brought to collation, the division shall not be stopped for such reason when the proper security is given.

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SECTION SECOND.—*Division.*

ART. 1051. No coheir can be obliged to continue in an undivided inheritance unless the testator should expressly forbid the division.

But even though forbidden, the division shall always be made for any of the causes by reason of which partnerships are dissolved.

ART. 1052. Every coheir having the free administration and disposal of his property may at any time request the division of the estate.

The legal representatives of incapacitated persons and absentees must request the division in their name.

ART. 1053. The wife can not ask for the division of property without the authority of the husband, or, in a proper case, of the judge. Should the husband request it in the name of his wife, he shall do so with her consent.

The coheirs of the wife can not request the division without the institution of a joint suit against her and her husband.

ART. 1054. The conditional heirs can not request the division until the condition is complied with. But the other coheirs may request it by properly securing the right of the former in case the condition is fulfilled; and until it is known that it has not been or can no longer be complied with, the division shall be considered as provisional.

ART. 1055. If, before making the division, one of the coheirs should die, leaving two or more heirs, it shall be sufficient for one of them to request it, but all those who intervene in such capacity shall appear under a single representation.

ART. 1056. If the testator should make a division of his property by an act *inter vivos* or by a last will, it shall be accepted in so far as it does not prejudice the legal portion of the heirs by force of law.

A father who, in the interest of his family, desires to keep an agricultural, industrial, or manufacturing enterprise undivided may make use of the privilege granted him by this article by providing that the legal portions of the other children be paid in cash.

ART. 1057. The testator may, by an act *inter vivos* or *causa mortis*, intrust the mere power of making the division after his death to any person who is not one of the coheirs.

The provisions of this and the foregoing articles shall be observed, even should there be a minor or a person subject to guardianship among the coheirs; but the trustee must in such case make an inventory of the property of the inheritance, citing the coheirs, the creditors, and the legatees.

ART. 1058. Should the testator not have made any division, nor entrusted this power to another, if the heirs should be of age and should have the free administration of their property, they may distribute the estate in the manner they may see fit.

ART. 1059. If the heirs of age should not agree as to the manner of making the division, they shall be free to enforce their rights in the manner prescribed in the law of civil procedure.

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ART. 1060. If the minors should be subject to the parental authority, and are represented in the division by the father or by the mother, in a proper case, neither judicial intervention nor approval shall be required.

ART. 1061. In the division of the estate all possible fairness shall be observed by drawing lots or awarding to each one of the coheirs things of the same nature, quality, or kind.

ART. 1062. If a thing should be individable or should become considerably impaired by being divided, it may be awarded to one of the heirs under condition of paying to the others the difference in cash.

But it shall be sufficient if a single one of the heirs requests its sale at public auction, outside bidders being admitted in order that it may take place.

ART. 1063. On making the division, the coheirs shall reciprocally compensate each other for the income and fruits each of them may have received from the hereditary property for the useful and necessary expenses made on said property or for the damage caused thereto by malice or negligence.

ART. 1064. The costs of the division, made for the common interests of all the coheirs, shall be deducted from the estate; those made for the particular interest of one of them shall be defrayed by the same.

ART. 1065. The titles of acquisition or of ownership shall be delivered to the coheir to whom the estate or estates to which they refer may have been awarded.

ART. 1066. When the same title includes several estates awarded to several coheirs, or one only which may have been divided among two or more, the title shall remain in the possession of the person having the largest interest in the estate or estates, and true copies thereof shall be furnished the others at the expense of the estate. Should the interests be equal, the title shall be delivered to the male heir, and should there be more than one, to the eldest.

Should the title be an original one, the person in whose possession it remains shall furthermore be obliged to exhibit it to the other persons interested, when they request it.

ART. 1067. If any of the heirs should sell his hereditary rights to a stranger before the division, all or any of the coheirs may subrogate himself in the place of the purchaser, reimbursing him for the value of the purchase, provided they do so within the period of a month, to be counted from the time they were informed thereof.

SECTION THIRD.—*Effects of division.*

ART. 1068. A division legally made confers upon each heir the exclusive ownership of the property which may have been awarded to him.

ART. 1069. After the division has been made, the coheirs shall be mutually bound to the surrender, and shall guarantee the property awarded.

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ART. 1070. The obligation referred to in the foregoing article shall cease in the following cases only:

1. Should the testator himself have made the division, unless it appears or may be reasonably presumed that he desired the contrary, and always reserving the legal portion.

2. Should it have been expressly stipulated on making the division.

3. Should the surrender arise from a cause subsequent to the division, or should it have been caused by the fault of the person to whom it was awarded.

ART. 1071. The mutual obligation of the coheirs to surrender is in proportion to their respective hereditary shares; but if any of them should be insolvent the other coheirs shall be liable for his part, in the same proportion, deducting the part pertaining to the one to be indemnified.

Those paying for the insolvent shall preserve their action against him until the time when his fortune may improve.

ART. 1072. If a credit should be awarded as recoverable, the coheirs shall not be liable for the subsequent insolvency of the debtor to the estate, and shall be liable only for his insolvency at the time the division is made.

No one shall be liable for the credits qualified as unrecoverable; but should they be collected, in whole or in part, the amount collected shall be distributed in the proper proportion among the heirs.

SECTION FOURTH—*Rescission of the division.*

ART. 1073. Divisions may be rescinded for the same causes as obligations.

ART. 1074. They may also be rescinded by reason of *lesion* exceeding the fourth part, taking into consideration the value of the things at the time they were awarded.

ART. 1075. The division made by the testator can not be impugned by reason of *lesion* excepting in the cases in which it may injure the legal portion of the heirs by force of law, or when it may appear, or it may be reasonably presumed, that the will of the testator was otherwise.

ART. 1076. A rescissory action by reason of *lesion* shall prescribe after four years, counting from the time the division was made.

ART. 1077. A defendant heir may choose between indemnifying for the damage or consent to a new division.

The indemnity may be paid in cash or in the same thing which suffered the damage.

If a new division is made it shall not include those who may not have been prejudiced, nor those who did not receive more than was proper.

ART. 1078. An heir who may have alienated the whole or a considerable part of the real property awarded to him can not institute the rescissory action by reason of *lesion.*

ART. 1079. The omission of one or more objects or securities of the inheritance does not give rise to the rescission of the division by rea-

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son of *lesion*, but only to complete or increase the estate with the objects or securities omitted.

ART. 1080. A division, made with preterition of any of the heirs, shall not be rescinded unless it be proven that there was bad faith or deceit on the part of the other persons interested; but the latter shall be obliged to pay to the omitted person the proportionate share belonging to him.

ART. 1081. A division made with a person who was believed to be an heir without being so shall be void.

SECTION FIFTH.—*Payment of hereditary debts.*

ART. 1082. Creditors, recognized as such, may oppose the division of the inheritance until they are paid or the amount of their credits is secured.

ART. 1083. Creditors of one or more of the coheirs may take part, at their own expense, in the division in order to prevent it being made in fraud or to the prejudice of their rights.

ART. 1084. After the division has been made the creditors may demand the payment of their debts in full of any of the heirs who may not have accepted the inheritance under the benefit of inventory, or up to the amount of their hereditary share in case they have accepted it under such benefit.

In either case the defendant shall have a right to notify and summon his coheirs, unless, by disposition of the testator or by reason of the division, he alone should be bound to pay the debt.

ART. 1085. The coheir who shall have paid more than pertains to his share in the inheritance may demand his proportionate part of the others.

The same course shall be pursued if, by reason of the debt being secured by mortgage or consisting in a specified object, he should have paid it in full. The person to whom it has been awarded may, in such case, demand of his coheirs the proportional part only, even though the creditor should have transferred to him his actions and subrogated him in his place.

ART. 1086. Should any of the estates of the inheritance be charged with a perpetual income or real-property charge it shall not be extinguished, even when redeemable, unless a majority of the coheirs agree thereto.

Should this not be agreed to or should the charge not be redeemable, its value or principal shall be deducted from that of the estate, and the latter shall pass with the charge to the person to whom it may be allotted or awarded.

ART. 1087. The coheir, who at the same time should be a creditor of the deceased, may demand of the others the payment of his credit, deducting his proportional part as such heir, and without prejudice to the provisions of section fifth, chapter fifth, of this title.

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BOOK FOURTH.

OBLIGATIONS AND CONTRACTS.

TITLE I.

Obligations.

CHAPTER FIRST.

General provisions.

ART. 1088. Every obligation consists in giving, doing, or not doing something.

ART. 1089. Obligations are created by law, by contracts, by quasi-contracts, and by illicit acts and omissions or by those in which any kind of fault or negligence occurs.

ART. 1090. Obligations arising from law are not presumed. Those expressly determined in this code or in special laws are the only demandable ones, and they shall be governed by the provisions of the laws which may have established them and by those of this book in regard to what has not been prescribed by said laws.

ART. 1091. Obligations arising from contracts have legal force between the contracting parties, and must be fulfilled in accordance with their stipulations.

ART. 1092. Civil obligations, arising from crimes or misdemeanors, shall be governed by the provisions of the penal code.

ART. 1093. Those arising from acts or omissions, in which faults or negligence, not punished by law, occur, shall be subject to the provisions of chapter second of title sixteen of this book.

CHAPTER SECOND.

Nature and effects of obligations.

ART. 1094. A person obliged to give something is also bound to preserve it with the diligence pertaining to a good father of a family.

ART. 1095. A creditor has a right to the fruits of a thing from the time the obligation to deliver it arises. However, he shall not acquire a property right thereto until it has been delivered to him.

ART. 1096. Should the thing to be delivered be a specified one the creditor, independently of the right granted him by article 1001, may compel the debtor to make the delivery.

Should the thing be undetermined or generic he may ask that the obligation be fulfilled at the expense of the debtor.

Should the person obligated be in default, or be bound to deliver the same thing to two or more different persons, he shall be liable therefor with regard to unforeseen events until the delivery is made.

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ART. 1097. The obligation to give a specified thing includes that of delivering all of its accessories, even though they may not have been mentioned.

ART. 1098. If the person obliged to do something should not do it, it shall be ordered to be done at his expense.

This shall also be done should he act in contravention of the tenor of the obligation. Whatever has been badly done may also be ordered to be undone.

ART. 1099. The provisions of the second paragraph of the preceding article shall also be observed when the obligation consists in not doing and the debtor should do what he has been forbidden.

ART. 1100. Persons obliged to deliver or to do something are in default from the moment when the creditor demands the fulfillment of their obligation, judicially or extrajudicially.

However, the demand of the creditor, in order that default may exist, shall not be necessary—

1. If the obligation or law declares it expressly.

2. If by reason of its nature and circumstances it may appear that the fixing of the period within which the thing was to be delivered or the service rendered was a determinate cause to constitute the obligation.

In mutual obligations none of the persons bound shall incur default if the other does not fulfill or does not submit to properly fulfill what is incumbent upon him. From the time one of the persons obligated fulfills his obligation the default begins for the other party.

ART. 1101. Those who in fulfilling their obligations are guilty of fraud, negligence, or delay, and those who in any manner whatsoever act in contravention of the stipulations of the same, shall be subject to indemnify for the losses and damages caused thereby.

ART. 1102. Liability arising from fraud is demandable in all obligations. The renunciation of the action to enforce it is void.

ART. 1103. Liability arising from negligence is also demandable in the fulfillment of all kinds of obligations; but it may be mitigated by the court, according to the case.

ART. 1104. The fault or negligence of the debtor consists of the omission of the steps which may be required by the character of the obligation, and which may pertain to the circumstances of the persons, time, and place.

Should the obligation not state what conduct is to be observed in its fulfillment, that observed by a good father of a family shall be required.

ART. 1105. No one shall be liable for events which could not be foreseen, or which having been foreseen were inevitable, with the exception of the cases expressly mentioned in the law or those in which the obligation so declares.

ART. 1106. Indemnity for losses and damages includes not only the amount of the loss which may have been suffered, but also that of

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the profit which the creditor may have failed to realize, reserving the provisions contained in the following articles.

ART. 1107. The losses and damages for which a debtor in good faith is liable, are those foreseen or which may have been foreseen, at the time of constituting the obligation, and which may be a necessary consequence of its nonfulfillment.

In case of fraud, the debtor shall be liable for all those which clearly may originate from the nonfulfillment of the obligation.

ART. 1108. Should the obligation consist in the payment of a sum of money, and the debtor should be in default, the indemnity for losses and damages, should there not be a stipulation to the contrary, shall consist in the payment of the interest agreed upon, and should there be no agreement, in that of the legal interest.

Until another rate is fixed by the Government, interest at the rate of 6 per cent per annum shall be considered as legal.

ART. 1109. Interest due shall earn legal interest from the time it is judicially demanded, even if the obligation should have been silent on this point.

In commercial transactions the provisions of the code of commerce shall be observed.

Pawn shops and savings banks shall be governed by their special regulations.

ART. 1110. A receipt from the creditor for the principal, without any stipulation regarding interest, extinguishes the obligation of the debtor with regard thereto.

The receipt for the last installment of a debt, when the creditor has made no reservation, shall also extinguish the obligation with regard to the previous installments.

ART. 1111. Creditors, after having attached the property of which the debtor may be in possession, in order to collect all that is due them, may exercise all the rights and actions of the latter for the same purpose, excepting those inherent in his person; they may also impugn the acts which the debtor may have performed in fraud of their right.

ART. 1112. All the rights acquired by virtue of an obligation are transmissible, subject to law, should there be no stipulation to the contrary.

CHAPTER THIRD.

Different kinds of obligations.

SECTION FIRST.—*Pure and conditional obligations.*

ART. 1113. Every obligation, the fulfillment of which should not depend upon a future or uncertain event or upon a past event, unknown to the parties in interest, shall be immediately demandable.

Every obligation, containing a condition subsequent, shall also be demandable without prejudice to the effect of the performance.

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ART. 1114. In conditional obligations, the acquisition of rights, as well as the extinction or loss of those already acquired, shall depend upon the event constituting the condition.

ART. 1115. If the fulfillment of the condition should depend upon the exclusive will of the debtor, the conditional obligation shall be void. If it should depend upon chance or upon the will of a third person, the obligation shall produce all its effects in accordance with the provisions of this code.

ART. 1116. Impossible conditions, those contrary to morality, and those forbidden by law, shall annul the obligation depending upon them.

The condition of not doing a thing which is impossible is considered as not imposed.

ART. 1117. The condition that a certain event shall happen within a fixed period, shall extinguish the obligation from the time the period lapses or when there is no doubt that the event will not take place.

ART. 1118. The condition that a certain event shall not occur within a fixed period shall render the obligation binding from the time the period fixed elapses, or when it becomes evident that such event can not occur.

Should there not be a fixed period, the condition shall be considered as fulfilled within the time which would probably have been fixed, in view of the nature of the obligation.

ART. 1119. The condition shall be considered as fulfilled when the obligated party should voluntarily prevent its fulfillment.

ART. 1120. The effects of a conditional obligation to give after the condition has been fulfilled shall retroact to the day on which it was constituted. Nevertheless, if the obligation should impose mutual prestations on the parties concerned, the fruits and interest for the time during which the condition has been pending shall be understood as compensating each other. Should the obligation be unilateral, the debtor shall become the owner of the fruits and interest collected, unless by reason of the nature and circumstances of the obligation it must be inferred that the will of the person constituting it was otherwise.

In the obligations of doing or of not doing, the courts shall determine in each case the retroactive effect of the condition fulfilled.

ART. 1121. The creditor may, before fulfilling the conditions, enforce the actions which may be proper for the preservation of his right.

The debtor may recover what he may have paid during the same period.

ART. 1122. Should the conditions be established for the purpose of suspending the efficiency of the obligation to give, the following rules shall be observed in case the thing should improve, or be lost or impaired while the condition is pending:

1. If the thing was lost without fault of the debtor, the obligation shall be extinguished.

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2. If the thing was lost by the fault of the debtor, he is obliged to make good the losses and damages.

It is understood the thing is lost when it perishes, becomes unsaleable, or disappears in such a manner that its existence is unknown, or it is not possible to recover it.

3. If the thing deteriorates without fault of the debtor, the deterioration shall be borne by the creditor.

4. If the thing should deteriorate by the fault of the debtor, the creditor may choose between the rescission of the obligation and its fulfillment, with indemnity for damages in both cases.

5. If the thing should improve by its nature or by time, the improvements accrue to the benefit of the creditor.

6. If it should improve at the expense of the debtor, the latter shall have no more rights than those granted a usufructuary.

ART. 1123. If the object of the conditions should be to rescind the obligation to give, after they are performed, the parties in interest shall mutually return all they may have received.

In cases of loss, deterioration or improvement of the thing, the provisions relating to debtors, contained in the preceding article, shall be applied to the person obliged to make restitution.

With regard to the obligations of doing or not doing, the provisions of the second paragraph of article 1120 shall be observed in so far as the effects of the rescission are concerned.

ART. 1124. The right to rescind the obligations is considered as implied in mutual ones, in case one of the obligated persons does not comply with what is incumbent upon him.

The person prejudiced may choose between exacting the fulfillment of the obligation or its rescission, with indemnity for damages and payment of interest in either case. He may also demand the rescission, even after having requested its fulfillment, should the latter appear impossible.

The court shall order the rescission demanded, unless there are sufficient causes authorizing it to fix a period.

This is understood without prejudice to the rights of third acquirers, in accordance with articles 1295 and 1298, and with the provisions of the mortgage law.

SECTION SECOND.—*Obligations with definite periods.*

ART. 1125. Obligations, the fulfillment of which has been fixed for a day certain, shall only be demandable when the proper day arrives.

A day certain is understood to be one which must necessarily arrive, even though its date be unknown.

If the uncertainty should consist in the arrival or nonarrival of the day, the obligation is conditional and shall be governed by the rules of the preceding section.

ART. 1126. In obligations with definite periods, what has been paid in advance can not be recovered.

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If the person who paid was not aware when he did so of the existence of the period, he shall have a right to claim from the creditor the interest or fruits which the latter may have received from the thing.

ART. 1127. Whenever a period should be fixed in obligations, it is presumed as established for the benefit of the creditor as well as of the debtor, unless from their tenor or from other circumstances it should appear that it was established for the benefit of one or the other.

ART. 1128. Should the obligation not fix a period, but it can be inferred from its nature and circumstances that there was an intention to grant it to the debtor, the courts shall fix the duration of the same.

The courts shall also fix the duration of the period when it may have been left to the will of the debtor.

ART. 1129. The debtor shall lose all right to profit by the period—

1. If, after contracting the obligation, it should appear that he is insolvent, unless he gives security for the debt.

2. If he does not give to the creditor the guaranties stipulated.

3. If by his own acts he should have reduced said guaranties after giving them, and if they disappear through an fortuitous event, unless they are immediately substituted by new ones equally safe.

ART. 1130. If the period of the obligation be fixed by days, to be counted from a specified one, such day shall be excluded from the computation, which must begin on the following one.

SECTION THIRD.—*Alternative obligations.*

ART. 1131. A person who is alternatively obliged to make different prestations must fully comply with one of them.

A creditor can not be compelled to receive a part of one and a part of another.

ART. 1132. The option pertains to the debtor unless it has been expressly granted the creditor.

A debtor shall not have the right to choose prestations which are impossible, illicit, or which could not have been the object of the obligation.

ART. 1133. The election shall be effective only from the time it was made known.

ART. 1134. A debtor shall lose the right of option when, of the prestations which he is alternatively obliged to make, only one is feasible.

ART. 1135. A creditor shall have the right to indemnity for losses and damages when, by the fault of the debtor, all the things which were alternatively the objects of the obligation should have disappeared, or it should have become impossible to fulfill the latter.

The indemnity shall be fixed, taking as a basis the value of the last thing which may have disappeared or of the last service which has become impossible.

ART. 1136. When an option has been expressly granted the creditor the obligation shall cease to be alternative from the day on which notice of said option may have been given to the debtor.

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Until then the liability of the debtor shall be governed by the following rules:

1. If any of the things should have been lost by a fortuitous event, he shall perform by delivering the one which the creditor may select from among those remaining, or the one remaining if only one should exist.

2. If the loss of any of the things should have been caused by the fault of the debtor the creditor may claim any of those remaining or the value of the one which has disappeared by the fault of the debtor.

3. If all the things should have been lost by the fault of the debtor the creditor shall have a right to select the value of any one of them.

The same rules shall be applied to the obligations of doing or not doing, in case that any or all of the prestations should be impossible.

SECTION FOURTH.—*Several and joint obligations.*

ART. 1137. The concurrence of two or more creditors, or of two or more debtors in a single obligation, does not imply that each one of the former has a right to ask, nor that each one of the latter is bound to comply in full with the things which are the object of the same. This shall only take place when the obligation determines it expressly, being constituted as a joint obligation.

ART. 1138. If from the context of the obligations referred to in the preceding article any other thing does not appear the credit or the debt shall be presumed as divided in as many equal parts as there are creditors or debtors, being considered as credits or debts, each one different from the other.

ART. 1139. If the division should be impossible, the right of the creditors shall only be prejudiced by the collective acts of the same, and the debt shall only be recoverable by proceedings against all of the debtors. If any of the latter should be insolvent, the rest shall not be obliged to pay his share.

ART. 1140. Solidarity may exist, even though the creditors and debtors are not bound in the same manner, and for the same periods and under the same conditions.

ART. 1141. Each of the joint creditors may do whatever may be profitable to the others, but not what may be prejudicial.

The actions instituted against any one of the joint debtors shall prejudice all of them.

ART. 1142. A debtor may pay the debt to any one of the joint creditors; but should it have been sued by any one of them, he must make the payment to the latter.

ART. 1143. Novation, compensation, confusion, or remission of the debt, made by any of the joint creditors, or with any of the debtors of the same class, extinguishes the obligation without prejudice to the provisions of article 1146.

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A creditor who may have executed any of these acts, as well as the person who collects the debt, shall be liable to the others for the part pertaining to them in the obligation.

ART. 1144. A creditor may sue any of the joint debtors or all of them simultaneously. The actions instituted against one shall not be an obstacle for those that may be brought subsequently against the others, as long as it does not appear that the debt has been collected in full.

ART. 1145. The payment made by one of the joint debtors extinguishes the obligation.

The person who made the payment can only claim from his codebtors the shares pertaining to each one with interest on the amounts advanced.

The nonfulfillment of the obligation by reason of the insolvency of a joint debtor shall be made good by his codebtors in proportion to the debt of each of them.

ART. 1146. The waiver or remission made by the creditor of the part affecting one of the joint debtors does not release the latter from his liability with regard to the codebtors in case the debt should have been paid in full by any of them.

ART. 1147. If the thing should have perished, or the prestation should have become impossible, without any fault of the joint debtors, the obligation shall be extinguished.

If there should have been any fault on the part of any of them, all shall be liable with regard to the creditor for the value and the indemnity for damages and payment of interest, without prejudice to his action against the culpable or negligent person.

ART. 1148. A joint debtor may utilize, against the claims of the creditor, all the exceptions arising from the nature of the obligation and those which are personal to him. Those personally pertaining to the others may be employed by him only with regard to the share of the debt for which the latter may be liable.

SECTION FIFTH.—*Divisible and indivisible obligations.*

ART. 1149. The divisibility or indivisibility of things, the object of obligations, in which there is one debtor and one creditor, does not change nor modify the provisions of chapter second of this title.

ART. 1150. An indivisible several obligation is determined by indemnifying for losses and damages from the time any of the debtors fails to comply therewith. The debtors who may have been disposed to perform their obligations shall only contribute to the indemnity a sum equivalent to the corresponding portion of the value of the thing or of the service of which the obligation may consist.

ART. 1151. For the purposes of the preceding articles the obligations to give specified things and all those which are not capable of partial fulfillment shall be considered as indivisible.

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The obligations of doing shall be divisible when their purpose is the prestation of a number of days of work, the execution of works by units of measurement, or other similar things which by reason of their nature are capable of partial fulfillment.

In obligations of not doing the divisibility or indivisibility shall be decided by the character of the prestation in each particular case.

SECTION SIXTH.—*Obligations with a penal clause.*

ART. 1152. In obligations with a penal clause the penalty shall substitute indemnity for damages and the payment of interest in case of nonfulfillment, should there be no agreement to the contrary.

This penalty can only be enforced when it is demandable in accordance with the provisions of this code.

ART. 1153. The debtor can not exempt himself from the fulfillment of the obligation by paying the penalty, unless such right has been expressly reserved to him. Neither may the creditor exact the fulfillment of the obligation and also the payment of the penalty, unless such right has been clearly granted him.

ART. 1154. The judge shall equitably mitigate the penalty if the principal obligation should have been partly or irregularly fulfilled by the debtor.

ART. 1155. The nullity of the penal clause does not carry with it that of the principal obligation.

The nullity of the principal obligation carries with it that of the penal clause.

CHAPTER FOURTH.

Extinction of obligations.

GENERAL PROVISIONS.

ART. 1156. Obligations are extinguished—

By their payment or fulfillment.

By the loss of the thing due.

By the remission of the debt.

By the merging of the rights of the creditor and debtor.

By compensation.

By novation.

SECTION FIRST.—*Payment.*

ART. 1157. A debt shall not be considered as paid until the full amount of the thing has been delivered, or the prestation of which the obligation consisted has been made.

ART. 1158. Any person, whether he has an interest or not in the fulfillment of the obligation, and whether the debtor knows and approves it or is not aware thereof, can make the payment.

The person paying for the account of another may recover from the debtor what he may have paid, unless he has done it against his express will.

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In such case he can only recover from the debtor in so far as the payment has been useful to him.

ART. 1159. A person paying in the name of the debtor, without the knowledge of the latter, can not compel the creditor to subrogate him in his rights.

ART. 1160. In obligations to give, the payment made by a person not having the free disposal of the thing due, and capacity to convey it, shall not be valid.

However, if the payment should have consisted in a sum of money or in a thing perishable, no action can be brought against the creditor who may have spent or consumed it in good faith.

ART. 1161. In obligations of doing, the creditor can not be compelled to receive the prestation or the services from a third party, when the quality and circumstances of the person of the debtor should have been taken into account in establishing the obligation.

ART. 1162. Payment must be made to the person in whose favor the obligation is constituted, or to another authorized to receive it in his name.

ART. 1163. The payment made to a person who is incapacitated from managing his property shall be valid in so far as it may have been employed for his benefit.

A payment made to a third person shall also be valid in so far as it may have been beneficial to the creditor.

ART. 1164. A payment made in good faith to the person who is in possession of the credit shall release the debtor.

ART. 1165. A payment made by the debtor to the creditor after he has been judicially ordered to retain the debt shall not be valid.

ART. 1166. The debtor of a thing can not oblige his creditor to receive a different one, even though it should be of equal or greater value to that due.

Neither in obligations of doing can a prestation be substituted by another against the will of the creditor.

ART. 1167. If the obligation should consist in the delivery of a thing, not specified or generic, the quality and circumstances of which should not have been expressed, the creditor can not exact one of a superior quality nor can the debtor deliver one of an inferior quality.

ART. 1168. Extrajudicial expenses arising from the payment shall be charged to the debtor. With regard to judicial expenses the court shall decide in accordance with the law of civil procedure.

ART. 1169. Unless the contract expressly authorizes it the creditor can not be compelled to partially receive the prestations of which the obligation consists.

However, should the debt be in part determined and in part undetermined, the creditor may exact and the debtor may make payment of the former without awaiting for the liquidation of the latter.

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ART. 1170. Payments of debts of money shall be made in the specie stipulated and, should it not be possible to deliver the specie, in legal silver or gold coin current in Spain.

The delivery of promissory notes to order or drafts or other commercial paper shall only produce the effects of payment when collected or when, by the fault of the creditor, their value has been affected.

In the meantime the action arising from the original obligation shall be suspended.

ART. 1171. Payments shall be made at the place designated in the obligation.

Should it not have been designated, and when a determined thing is to be delivered, the payment shall be made at the place where the thing existed at the time of constituting the obligation.

In any other case the place of payment shall be that of the domicile of the debtor.

Application of payments.

ART. 1172. A person having several debts of the same kind in favor of a single creditor may declare, at the time of making a payment, to which of them it is to be applied.

If the debtor should accept a receipt from the creditor, setting forth the application of the payment, he can not make a claim against it, unless there should be some cause which may invalidate the contract.

ART. 1173. If the debt bears interest the payment can not be considered as made on account of the principal until the interest is covered.

ART. 1174. When the payment can not be applied according to the preceding rules the debt which is most onerous for the debtor among those which may be due shall be considered as the one paid.

If the latter should have the same nature and charges the payment shall be applied to all pro rata.

Payment by assignment of property.

ART. 1175. The debtor may assign his property to creditors in payment of his debts. This assignment releases the former from liability only to the net amount of the property assigned, unless there is an agreement to the contrary. Agreements entered into between the debtor and his creditors with regard to the effect of an assignment shall be made in accordance with the provisions of title seventeen of this book and with those of the Law of Civil Procedure.

Tender of payment and consignation.

ART. 1176. If the creditor to whom the tender of payment has been made should refuse to accept it, without reason, the debtor shall remain released from all liability by the consignation of the thing due.

The same effect shall be produced by the consignation alone when made in the absence of the creditor, or when the latter should be incapacitated to accept the payment when it is due, and when several persons claim to have a right to collect it, or when the instrument mentioning the obligation has been mislaid.

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ART. 1177. In order that the consignation of the thing due may release the obligee, notice thereof must previously be given to the persons interested in the fulfillment of the obligation.

Consignation shall have no effect when not strictly in accordance with the provisions governing payment.

ART. 1178. Consignation shall be made by depositing the things due at the disposal of the judicial authority before whom the tender shall be proven in a proper case and the notice of the consignation in other cases.

After the consignation has been made the persons interested shall also be notified thereof.

ART. 1179. The expenses of the consignation, when proper, shall be charged to the creditor.

ART. 1180. After the consignation has been duly made the debtor may request the judge to order the cancellation of the obligation.

Until the creditor may accept the consignation or a judicial decision should be rendered that it was properly done, the debtor may withdraw the thing or amount consigned, leaving the obligation in force.

ART. 1181. If, after the consignation has been made, the creditor should authorize the debtor to withdraw it, the former shall lose the preference he may have in the thing. The codebtors and sureties shall be released.

SECTION SECOND.—*Loss of the thing due.*

ART. 1182. An obligation, consisting in the delivery of a specified thing, shall be extinguished when said thing should be lost or destroyed without fault of the debtor and before he should be in default.

ART. 1183. Whenever the thing should be lost, when in the possession of the debtor, it shall be presumed that the loss occurred by his fault and not by a fortuitous event, unless there is proof to the contrary and without prejudice to the provisions of article 1096.

ART. 1184. In obligations to do, the debtor shall also be released when the prestation appears to be legally or physically impossible.

ART. 1185. When the debt for a certain and specified thing arises from a crime or misdemeanor the debtor shall not be exempted from the payment of its value, whatever the cause of the loss may have been, unless, having offered the thing to the person who should have received it, the latter should have refused to accept it without reason.

ART. 1186. After the obligation is extinguished by the loss of the thing, all the actions which the debtor may have against third persons, by reason thereof shall pertain to the creditor.

SECTION THIRD.—*Remission of debts.*

ART. 1187. A remission may be made either expressly or by implication.

Both shall be subject to the provisions governing illegal gifts. An express remission must, furthermore conform, to the forms of a gift.

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ART. 1188. The surrender, made voluntarily by a creditor to his debtor, of a private instrument proving a credit, implies the renunciation of the action which the former had against the latter.

If in order to invalidate this renunciation, it should be claimed that it is illegal, the debtor and his heirs may support it by proving that the delivery of the instrument was made by virtue of the payment of the debt.

ART. 1189. Whenever the private instrument from which the debt appears should be in the possession of the debtor, it shall be presumed that the creditor delivered it of his own will, unless the contrary is proven.

ART. 1190. The remission of the principal debt shall extinguish the accessory obligations; but the remission of the latter shall leave the former in force.

ART. 1191. The accessory obligation of a pledge shall be considered as remitted, when the thing pledged, after having been delivered to the creditor, should be in the possession of the debtor.

SECTION FOURTH.—*Confusion of rights.*

ART. 1192. Whenever the characters of creditor and debtor are merged in the same person, the obligation is extinguished.

The case in which this confusion takes place by virtue of inheritance is excepted, if said inheritance should have been accepted under benefit of inventory.

ART. 1193. The confusion which takes place in the person of the debtor or of the principal creditor is beneficial to the sureties. That taking place in any of the latter does not extinguish the obligation.

ART. 1194. Confusion does not extinguish debts in severalty, except with regard to the part pertaining to the creditor or debtor in whom both characters are merged.

SECTION FIFTH.—*Compensation.*

ART. 1195. Compensation shall take place when two persons, in their own right, are mutually creditors and debtors of each other.

ART. 1196. In order that compensation may be proper, it is required:

1. That each of the persons bound should be so principally, and that he be at the same time the principal creditor of the other.

2. That both debts consist of a sum of money or, when the things due are perishable, that they be of the same kind and also of the same quality, if the latter should have been stipulated.

3. That both debts be due.

4. That they be determined and demandable.

5. That none of them is subject to any retention or suit instituted by a third person, and of which due notice has been given the debtor.

ART. 1197. Notwithstanding the provisions of the preceding article, the surety may oppose compensation with regard to what the creditor may owe his principal debtor.

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ART. 1198. A debtor who may have consented to the assignment of rights made by a creditor in favor of a third person, can not oppose, against the assignee, the compensation which should pertain to him against the assignor.

If the creditor gave him notice of the assignment and the debtor did not consent thereto, he may oppose compensation for prior debts, but not for subsequent ones.

If the assignment is made without knowledge of the debtor, he may oppose compensation for prior credits, and for subsequent ones, until he should have been informed of the assignment.

ART. 1199. Debts payable in different places may be compensated by an indemnity for the expenses of transportation or for the exchange at the place of payment.

ART. 1200. Compensation shall not be proper when any of the debts arise from a deposit, or from the obligations of the depositary or borrower.

Neither can it be set off to the creditor for support due by reason of a good consideration.

ART. 1201. When a person should have different debts, which may be compensated, the provisions relating to the imputation of payments shall be observed in the order of compensation.

ART. 1202. The effect of compensation is to extinguish both debts to the concurrent amount, even when the creditors and debtors have no knowledge thereof.

SECTION SIXTH.—*Novation.*

ART. 1203. Obligations may be modified—

1. By the change of their object or principal conditions.
2. By substituting the person of the debtor.
3. By subrogating a third person in the rights of the creditor.

ART. 1204. In order that an obligation may be extinguished by another which substitutes it, it is necessary that it should be so expressly declared, or that the old and new be incompatible in all points.

ART. 1205. Novation, consisting in the substitution of a debtor in the place of the original one, may be made without the knowledge of the latter, but not without the consent of the creditor.

ART. 1206. The insolvency of the new debtor, who may have been accepted by the creditor, shall not revive the action of the latter against the original debtor, unless said insolvency may have been prior, public, and known to the debtor when he transferred his debt.

ART. 1207. When the principal obligation is extinguished by reason of the novation, the accessory obligations shall only remain in force in so far as they benefit third persons who have not given their consent thereto.

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ART. 1208. Novation is void if the original obligation is also so, unless the cause of nullity can be claimed by the debtor only, or the ratification gives validity to acts which were void in their origin.

ART. 1209. The subrogation of a third person in the rights of a creditor can not be presumed, except in the cases expressly mentioned in this code.

In other cases it shall be necessary to prove it clearly in order that it may be effective.

ART. 1210. Subrogation shall be presumed—

1. When a creditor pays another preferred creditor.

2. When a third person, who is not interested in the obligation, pays with the express or implied approval of the debtor.

3. When the person who is interested in the fulfillment of the obligation pays, without prejudice to the effects of the confusion with regard to the share pertaining to him.

ART. 1211. A debtor may make the subrogation without the consent of the creditor when, in order to pay the debt, he may have borrowed money in a public instrument, stating his purpose and setting forth in the receipt the origin of the sum paid.

ART. 1212. Subrogation transfers to the subrogated the credit, with the corresponding rights, either against the debtor or against third persons, be they sureties or holders of mortgages.

ART. 1213. A creditor to whom a partial payment has been made may exercise his right with regard to the balance, with preference to the person subrogated in his place by virtue of the partial payment of the said credit.

CHAPTER FIFTH.

Proof of obligations.

GENERAL PROVISIONS.

ART. 1214. Proof of obligations devolves upon the persons claiming their fulfillment, and that of their extinction upon those opposing it.

ART. 1215. Proofs may be given by instruments, by confession, by the personal inspection of a judge, by experts, by witnesses, and by presumptions.

SECTION FIRST.—*Public instruments.*

ART. 1216. Public instruments are those authenticated by a notary or by a competent public official, with the formalities required by law.

ART. 1217. Instruments in which a notary public takes part shall be governed by the notarial law.

ART. 1218. Public instruments are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

They shall also be evidence against the contracting parties and their legal representatives with regard to the declarations the former may have made therein.

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ART. 1219. Public instruments, made for the purpose of impairing a former instrument, between the same parties, shall be effective against third parties only when the contents of the former should have been entered in the proper public registry or in the margin of the original instrument, and in that of the transcript or copy, by virtue of which the third person may have acted.

ART. 1220. Copies of public instruments of which there is an original or protocol, contested by those they prejudice, shall have force of proof only when they have been duly collated.

Should there be any difference between the original and the copy the contents of the former shall govern.

ART. 1221. Should the original instrument, the protocol, and the original record have disappeared, the following shall constitute evidence:

1. First copies made by the public official who authenticated them.
2. Subsequent copies issued by virtue of a judicial mandate, after citing the persons interested.
3. Those which, without a judicial mandate, may have been taken in the presence of the persons interested and with their consent.

In the absence of the said copies, any other copies, thirty or more years old, shall be evidence, provided they have been taken from the original by the official who authenticated them or by any other in charge of their custody.

Copies less than thirty years old, or which may be authenticated by a public official, in which the circumstances mentioned in the preceding paragraph do not concur, shall serve only as a basis of written evidence.

The force of proof of copies of a copy shall be weighed by the courts according to the circumstances.

ART. 1222. The entry in any public registry of an instrument which may have disappeared shall be weighed according to the rules established in the last two paragraphs of the preceding article.

ART. 1223. An instrument which is defective by reason of the incompetency of the notary or by reason of any other fault in its form shall be considered as a private instrument when signed by the parties who executed the same.

ART. 1224. An instrument acknowledging an agreement or contract proves nothing against the instrument containing the same if by excess or omission they disagree therewith, unless the novation of the former is expressly proven.

Private instruments.

ART. 1225. A private instrument legally acknowledged shall have, with regard to those who signed it and their legal representatives, the same force as a public instrument.

ART. 1226. A person against whom a written obligation, which appears signed by him, is set up in court is obliged to declare whether the signature is his or not.

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The heirs or the legal representatives of the person obligated may limit themselves to state if they know whether the signature to the obligation is or is not that of their principal.

A refusal, without sufficient cause, to make the statement mentioned in the preceding paragraphs may be construed by the courts as an admission of the authenticity of the instrument.

ART. 1227. The date of a private instrument shall be considered, with regard to third persons, only from the date on which it may have been filed or entered in a public registry, from the death of any of those who signed it, or from the date on which it may have been delivered to a public official by virtue of his office.

ART. 1228. Entries, registries, and private papers shall be evidence against the person who has written them only in all that may appear clearly stated; but a person who wishes to make use thereof is bound to accept them also in the part prejudicial to him.

ART. 1229. A note written or signed by a creditor at the end, in the margin, or on the back of an instrument held by him constitutes evidence in all that may be favorable to the debtor.

The same shall be understood of a note written or signed by the creditor, on the back, in the margin, or at the foot of the duplicate of an instrument or receipt which the debtor may hold.

In either case the debtor who wishes to avail himself of what may be favorable to him shall have to abide by what is prejudicial.

ART. 1230. Private instruments executed for the purpose of changing the agreements made in a public instrument shall produce no effect against a third person.

SECTION SECOND.—*Confession.*

ART. 1231. Confession may be made either judicially or extrajudicially.

In either case it shall be an indispensable condition for the validity of the confession that it should relate to personal acts of the confessor and that he should have legal capacity to make it.

ART. 1232. Confession is evidence against the author.

Exception is made of the case in which compliance with the laws may be evaded by the same.

ART. 1233. The confession can not be partially used against him who makes it unless it should refer to different facts, or when a part of the confession is proven by other means, or when, in any particular, it should be contrary to nature or law.

ART. 1234. Confession loses its effectiveness only when it is proven that on making it an error of fact was committed.

ART. 1235. A judicial confession must be made under oath before a judge of competent jurisdiction, and when he who may be benefited by it has actual representation in the proceedings.

ART. 1236. When a judicial confession under decisory oath is requested, the party from whom it is demanded may ask that the oath

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be referred to the adverse party, and should the latter refuse to take it, it shall be considered that the person has confessed.

ART. 1237. A decisory oath can not be demanded on incriminating facts nor on questions with regard to which the parties can not compromise.

ART. 1238. A confession made under decisory oath, whether deferred or referred, constitutes a proof only in favor or against the parties who submitted to it and their heirs or legal representatives.

No proof with regard to the falsity of said oath shall be admitted.

ART. 1239. Extrajudicial confession is considered as an act subject to the judgment of the courts, according to the rules established on evidence.

SECTION THIRD.—*Personal inspection by the judge.*

ART. 1240. Evidence by personal inspection by the judge shall only be effective in so far as it clearly permits the court to judge, by the external appearance of the thing inspected, of the fact which he desires to ascertain.

ART. 1241. The inspection made by a judge may be weighed in the sentence rendered by another judge, provided the former has set forth with perfect clearness in the proceedings the details and circumstances of the thing inspected.

SECTION FOURTH.—*Expert evidence.*

ART. 1242. This kind of evidence may only be made use of when, in order to weigh the facts, scientific, artistic, or practical knowledge is necessary or advisable.

ART. 1243. The value of this evidence and the form in which it is to be given are the subjects of the provisions of the law of civil procedure.

SECTION FIFTH.—*Evidence of witnesses.*

ART. 1244. Evidence of witnesses shall be admissible in all cases in which it should not have been expressly forbidden.

ART. 1245. All persons, of either sex, who are not disqualified by natural incapacity or by the provisions of law, may be witnesses.

ART. 1246. The following are disqualified by natural incapacity:

1. Lunatics or insane persons.
2. The blind and deaf, in those things a knowledge of which depends upon sight and hearing.
3. Minors under 14 years of age.

ART. 1247. The following are disqualified by provision of law:

1. Those directly interested in the suit.
2. The ascendants in the suits of their descendants and the latter in those of the former.

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3. The father-in-law or mother-in-law in the suits of the son-in-law or daughter-in-law, and vice versa.

4. The husband in the suits of his wife and the wife in those of her husband.

5. Those who, by reason of their rank or profession, are bound to preserve secrecy in the matters relating to their profession or rank.

6. Those specially disqualified to be witnesses to certain instruments.

The provisions of Nos. 2, 3, and 4 are not applicable in suits in which it is intended to prove the birth or death of children, or any private family matter which it may not be possible to verify by other means.

ART. 1248. The force of proof of depositions of witnesses shall be weighed by the courts in accordance with the provisions of the law of civil procedure, taking care to avoid that, by the simple coincidence of some depositions, unless their truthfulness be evident, the affairs may be finally decided in which instruments, private documents, or any basis of written evidence are usually made use of.

SECTION SIXTH.—*Presumptions.*

ART. 1249. Presumptions are not admissible, except when the fact from which they are to be deduced is fully proven.

ART. 1250. Presumptions established by law exempt those favored thereby from producing any further proof.

ART. 1251. Presumptions established by law may be destroyed by proof to the contrary, except in the cases in which it is expressly prohibited.

Only a judgment obtained in a suit for revision shall be effective against the presumption of the truth of the *res adjudicata.*

ART. 1252. In order that the presumption of the *res adjudicata* may be valid in another suit, it is necessary that, between the case decided by the sentence and that in which the same is invoked, there be the most perfect identity between the things, causes, and persons of the litigants, and their capacity as such.

In questions relating to the civil status of persons, and in those regarding the validity or nullity of testamentary provisions, the presumption of the *res adjudicata* shall be valid against third persons, even if they should not have litigated.

It is understood that there is identity of persons whenever the litigants of the second suit are legal representatives of those who litigated in the preceding suit, or when they are jointly bound with them or by the relations established by the indivisibility of prestations among those having a right to demand them, or the obligation to satisfy the same.

ART. 1253. In order that presumptions not established by law may be admitted as means of evidence, it is indispensable that between the fact demonstrated and the one it is desired to deduce there should exist a precise and direct connection according to the rules of human judgment.

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TITLE II.

Contracts.

CHAPTER FIRST.

General provisions.

ART. 1254. A contract exists from the moment one or more persons consent to bind himself or themselves, with regard to another or others, to give something or to render some service.

ART. 1255. The contracting parties may make the agreement and establish the clauses and conditions which they may deem advisable, provided they are not in contravention of law, morals, or public order.

ART. 1256. The validity and fulfillment of contracts can not be left to the will of one of the contracting parties.

ART. 1257. Contracts shall only be valid between the parties who execute them and their heirs, except, with regard to the latter, the case in which the rights and obligations arising from the contract are not transmissible, either by their nature, or by agreement, or by provision of law.

Should the contract contain any stipulation in favor of a third person, he may demand its fulfillment, provided he has given notice of his acceptance to the person bound before it may have been revoked.

ART. 1258. Contracts are perfected by mere consent, and from that time they are binding, not only with regard to the fulfillment of what has been expressly stipulated, but also with regard to all the consequences which, according to their character, are in accordance with good faith, use, and law.

ART. 1259. No one can contract in the name of another without being authorized by him or without having his legal representation according to law.

A contract executed in the name of another by one who has neither his authorization nor legal representation shall be void, unless it should be ratified by the person in whose name it was executed before being revoked by the other contracting party.

ART. 1260. Oaths shall not be admitted in contracts. If admitted, they shall be considered as not given.

CHAPTER SECOND.

Essential requisites for the validity of contracts.

GENERAL PROVISION.

ART. 1261. There is no contract unless the following requisites exist:

1. The consent of the contracting parties.
2. A definite object which may be the subject of the contract.
3. The cause for the obligation which may be established.

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SECTION FIRST.—*Consent.*

ART. 1262. Consent is shown by the concurrence of the offer and the acceptance of the thing and the cause which are to constitute the contract.

An acceptance made by letter does not bind the person making the offer, but from the time it came to his knowledge. The contract in such case is presumed as executed at the place where the offer was made.

ART. 1263. The following persons can not give consent:

1. Minors who are not emancipated.

2. Lunatics or the insane, and the deaf and dumb who do not know how to write.

3. Married women, in the cases specified by law.

ART. 1264. The incapacity, mentioned in the preceding article, is subject to the modifications which are determined by law and is understood without prejudice to the special disqualifications established by the same.

ART. 1265. Consent given by error, under violence, by intimidation, or deceit shall be void.

ART. 1266. In order that the error may invalidate the consent, it must refer to the substance of the thing, which may be the object of the contract, or to those conditions of the same, which should have been principally the cause of its execution.

An error with regard to the person shall invalidate a contract only when the consideration of the person should have been the principal cause of the same.

A mere error of account shall only give rise to its correction.

ART. 1267. Violence exists when, in order to exact the consent, irresistible force is used.

Intimidation exists when one of the contracting parties is inspired with a reasonable and well-grounded fear of suffering an imminent and serious injury to his person or property, or to the person or property of the spouse, descendants, or ascendants.

In order to classify the intimidation, the age, sex, and status of the person must be considered.

Fear of displeasing the persons to whom obedience and respect are due shall not annul the contract.

ART. 1268. Violence or intimidation shall annul the obligation, even if it should have been employed by a third person who did not take part in the contract.

ART. 1269. There is deceit when by words or insidious machinations on the part of one of the contracting parties the other is induced to execute a contract which without them he would not have made.

ART. 1270. In order that deceit may give rise to the nullity of a contract, it must be serious, and must not have been employed by both of the contracting parties.

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Incidental deceit renders the party who employed it liable to indemnify for losses and damages only.

SECTION SECOND.—*Objects of contracts.*

ART. 1271. All things, even future ones, which are not out of the commerce of man, may be objects of contracts.

Nevertheless, no contract may be executed with regard to future inheritances, except those the object of which is to make a division *inter vivos* of the estate, according to article 1056.

All services not contrary to law or to good morals may also be the object of a contract.

ART. 1272. Things or services which are impossible can not be the object of a contract.

ART. 1273. The object of every contract must be a thing determined with regard to its kind. The indetermination of the amount shall not be an obstacle to the existence of the contract, provided it may be possible to determine it without necessity of a new agreement between the contracting parties.

SECTION THIRD.—*Consideration of contracts.*

ART. 1274. In contracts, involving a valuable consideration, the prestation or promise of a thing or services by the other party is understood as a consideration for each contracting party; in remuneratory contracts, the service or benefits remunerated, and in those of pure beneficence, the mere liberality of the benefactor.

ART. 1275. Contracts without consideration or with an illicit one have no effect whatsoever. A consideration is illicit when it is contrary to law and good morals.

ART. 1276. The statement of a false consideration in contracts shall render them void, unless it be proven that they were based on another real and licit one.

ART. 1277. Even though the consideration should not be expressed in the contract, it is presumed that it exists and that it is licit, unless the debtor proves the contrary.

CHAPTER THIRD.

Effectiveness of contracts.

ART. 1278. Contracts shall be binding, whatever may be the form in which they may have been executed, provided the essential conditions required for their validity exist.

ART. 1279. Should the law require the execution of an instrument or other special formality in order to make the obligations of a contract binding, the contracting parties may compel each other to comply with said formalities from the moment in which consent and the other requirements, necessary for their validity, have taken place.

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ART. 1280. The following must appear in a public instrument:

1. Acts and contracts the object of which is the creation, transmission, modification, or extinction of property rights on real property.

2. Leases of the same property for six or more years, provided they are to the prejudice third persons.

3. Marriage contracts, and the creation and increase of dowries, whenever it is intended to enforce them against third persons.

4. The assignment, repudiation, and renunciation of hereditary rights or of those of the conjugal partnership.

5. The power to contract marriage, the general one for lawsuits, and the special ones to be presented in suits; the power to administer property and any other, the object of which is an act drafted or which is to be drafted in a public instrument, or which may prejudice a third person.

6. The assignment of actions or rights arising from an act contained in a public instrument.

All other contracts, in which the amount of the prestations of one of the two contracting parties exceeds 1,500 pesetas, must be reduced to writing, even though it be private.

CHAPTER FOURTH.

Interpretation of contracts.

ART. 1281. If the terms of a contract are clear and leave no doubt as to the intentions of the contracting parties, the literal sense of its stipulations shall be observed.

If the words should appear contrary to the evident intention of the contracting parties, the intention shall prevail.

ART. 1282. In order to judge as to the intention of the contracting parties, attention must principally be paid to their acts, contemporaneous and subsequent to the contract.

ART. 1283. However general the terms of the contract may be, there should not be understood as included therein things and cases different from those with regard to which the persons interested intended to contract.

ART. 1284. If any stipulation of a contract should admit of different meanings, it should be understood in the sense most suitable to give it effect.

ART. 1285. The stipulations of a contract should be interpreted in relation to one another, giving to those that are doubtful the meaning which may appear from the consideration of all of them together.

ART. 1286. Words which may have different meanings shall be understood in that which may be most in accordance with the nature and object of the contract.

ART. 1287. The uses or customs of the country shall be taken into consideration in interpreting ambiguity in contracts, supplying in the same the omission of stipulations which are usually included.

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ART. 1288. The interpretation of obscure stipulations of a contract must not favor the party occasioning the obscurity.

ART. 1289. When it should be absolutely impossible to decide the doubts by the rules established in the preceding articles, if they deal with incidental circumstances of the contract, and said contract involves a good consideration, they shall be decided in favor of the smallest transmission of rights and interests. Should the contract involve a valuable consideration, the doubt shall be decided in favor of the greatest reciprocity of interests.

Should the doubts, the decision of which is referred to in this article, involve the principal object of the contract so that the intention or will of the contracting parties can not be ascertained, the contract shall be void.

CHAPTER FIFTH.

Rescission of contracts.

ART. 1290. Contracts validly executed may be rescinded in the cases established by law.

ART. 1291. The following may be rescinded:

1. The contracts which may be executed by guardians without the authorization of the family council, provided the persons they represent have suffered *lesion* of more than one-fourth part of the value of the things which may have been the object thereof.

2. Those executed in representation of absentees, provided the latter have suffered the *lesion* referred to in the preceding number.

3. Those executed in fraud of creditors, when the latter can not recover, in any other manner, what is due them.

4. Contracts relating to things in litigation should they have been executed by the defendant without the knowledge and approval of the parties in litigation or of the competent judicial authority.

5. Any other contracts specially determined by law.

ART. 1292. Payments made, while in a state of insolvency, by a debtor on account of obligations, which at the time of making, the debtor could not be compelled to fulfill may also be rescinded.

ART. 1293. No contract shall be rescinded for *lesion*, excepting the cases mentioned in Nos. 1 and 2 of article 1291.

ART. 1294. The action for rescission is a subsidiary one; it may be enforced only when the person injured has no other legal remedy to obtain reparation for the injury.

ART. 1295. Rescission obliges the return of the things which were the objects of the contract, with their fruits and the sum with interest; therefore it can only be carried into effect when the person who may have claimed it can return that which, on his part, he is bound to do.

Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who have not acted in bad faith.

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In such case the indemnity for damages may be claimed from the person who caused the *lesion.*

ART. 1296. The rescission, referred to in No. 2 of article 1291, shall not take place in contracts executed with judicial authorization.

ART. 1297. Contracts by virtue of which the debtor alienates property, for a good consideration, are presumed to be executed in fraud of creditors.

Alienations for valuable considerations, made by persons against whom a condemnatory judgment, in any instance, has been previously rendered, or a writ of seizure of property has been issued, shall also be presumed fraudulent.

ART. 1298. Any person who may have acquired in bad faith things alienated in fraud of creditors must indemnify the latter for the losses and damages caused to them by the alienation whenever, for any reason whatsoever, it should be impossible for him to return them.

ART. 1299. The action asking rescission must be brought within four years.

For persons subject to guardianship and for absentees, the four years shall not commence until the incapacity of the former has ceased to exist, or the domicile of the latter is known.

CHAPTER SIXTH.

Nullity of contracts.

ART. 1300. Contracts containing the requisites mentioned in article 1261 may be annulled, even when there should be no *lesion* to the contracting parties, whenever they contain any of the defects which invalidate them according to law.

ART. 1301. The action for nullity shall last four years.

This term shall commence to run:

In cases of intimidation or violence from the day on which it has ceased;

In those of error or deceit or falsity of consideration, from the date of the consummation of the contract;

When the purpose of the action is to invalidate contracts made by a married woman, without consent or competent authority, from the date of the dissolution of the marriage;

And when it refers to contracts executed by minors or incapacitated persons, from the date they were released from guardianship.

ART. 1302. The action for nullity of contracts may be brought by those who are principally or subsidiarily obligated by virtue thereof. Persons with capacity can not, however, allege the incapacity of those with whom they contracted; neither those who caused the intimidation or violence, or employed deceit, or caused the error, can base their action on these defects of the contract.

ART. 1303. When the nullity of an obligation has been declared, the contracting parties shall restore to each other the things which have

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been the object of the contract with their fruits, and the value with its interest, without prejudice to the provisions contained in the following articles.

ART. 1304. When the nullity arises from the incapacity of one of the contracting parties, the incapacitated person is not obliged to make restitution, except to the extent he has profited by the thing or by the sum he may have received.

ART. 1305. When the nullity arises from the illegality of the consideration or the object of the contract, if the fact constitutes a crime or misdemeanor common to both contracting parties, they shall have no action against each other and proceedings shall be instituted against them, and, furthermore, the things or sum which may have been the object of the contract shall be applied as prescribed in the penal code with regard to the goods or instruments of the crime or misdemeanor.

This provision is applicable to the case in which there is a crime or misdemeanor on the part of only one of the contracting parties; but the one who is not guilty may recover what he may have given, and shall not be bound to fulfill what he may have promised.

ART. 1306. If the fact of which the illicit consideration consists does not constitute either a crime or misdemeanor, the following rules shall be observed:

1. When both parties are guilty, neither of them can recover what he may have given by virtue of the contract, nor claim the fulfillment of what the other party may have offered.

2. When only one of the contracting parties is guilty, he can not recover what he may have given by virtue of the contract, nor demand the fulfillment of what may have been offered him. The other party, who has had nothing to do with the illicit consideration, may reclaim what he may have given without being obliged to fulfill what he has offered.

ART. 1307. Whenever a person, who is obliged by a declaration of nullity to return a thing, can not return it because it has been lost, he must return the fruits collected and the value which the thing had when lost, with interest from the same date.

ART. 1308. While one of the contracting parties does not return that which he is obliged to deliver by virtue of the declaration of nullity, the other can not be compelled to fulfill, on his part, what is incumbent on him.

ART. 1309. The action of nullity is extinguished from the moment the contract may have been validly confirmed.

ART. 1310. Only contracts having all the requisites mentioned in article 1261 can be confirmed.

ART. 1311. The confirmation can be made either expressly or in an implied manner. It shall be understood that there is an implied confirmation when, being aware of the cause of the nullity and such cause having ceased to exist, the person who may have a right to invoke it

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should execute an act which necessarily implies his wish to renounce such a right.

ART. 1312. Confirmation does not require the consent of the contracting parties who are not entitled to exercise the action of nullity.

ART. 1313. Confirmation purges the contract of all defects which it may have contained from the moment of its execution.

ART. 1314. The action for nullity of a contract shall also be extinguished when the thing which is the object thereof should be lost by fraud or fault of the person having a right to bring the action.

If the cause of the action should be the incapacity of any of the contracting parties, the loss of the thing shall be no obstacle for the action to prevail, unless it has occurred by fraud or fault on the part of the plaintiff after having acquired capacity.

TITLE III.

Contracts relating to property by reason of marriage.

CHAPTER FIRST.

General provisions.

ART. 1315. Persons who may be joined in matrimony may, before celebrating it, execute contracts, stipulating the conditions for the conjugal partnership with regard to present and future property, without any other limitations than those mentioned in this code.

In the absence of contracts relating to property it shall be understood that the marriage has been contracted under the system of legal conjugal partnership.

ART. 1316. In the contracts referred to in the preceding article the contracting parties can not stipulate anything contrary to law or morality, nor humiliating to the authority within the family pertaining respectively to the future spouses.

All stipulations not in accordance with the provisions of this article shall be considered void.

ART. 1317. There shall also be considered as void and as not written in the contracts mentioned in the two preceding articles the stipulations by which the contracting parties in a general manner stipulate that the property of the spouses shall be submitted to the local laws and customs of regions governed by the law of the forum and not to the general provisions of this code.

ART. 1318. A minor who can marry in accordance with law may also execute his marriage contract, but it shall be valid only when in its execution the persons designated by law to give consent to the minor to contract marriage take part therein.

In case the marriage contract should be void, because the concurrence and signature of the said persons are lacking and the marriage, however, is valid according to law, it shall be understood that the minor has contracted it under the system of conjugal partnership.

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ART. 1319. In order that any change in the marriage contract be valid it must be made before the celebration of the marriage and in the presence and with the concurrence of the persons who took part in the contract as contracting parties. The attendance of the same witnesses shall not be necessary.

Any of the persons who attended the execution of the original contract can only be substituted by another, or his attendance may not be required when, by reason of death or any other legal reason, at the time of the execution of the new stipulation or the modification of the preceding one, attendance is impossible or should not be necessary according to law.

ART. 1320. After the marriage has been celebrated, the marriage contract executed prior thereto can not be changed, whether present or future property is involved.

ART. 1321. Marriage contracts and modifications made therein must be contained in a public instrument executed before the celebration of the marriage.

Property in the condition referred to in article 1324 is excepted from the preceding rule.

ART. 1322. Any modification which may be made in the marriage contract shall have no legal effect with regard to third persons if it does not include the following conditions:

1. That in the proper protocol, by a marginal note, reference be made to the notarial act or instrument containing the modification of the previous contract; and

2. That in case the original contract may be entered in the registry of property, the instrument by which it has been modified, be also entered.

The notary shall state these modifications in the authenticated copies of the stipulations or original contract he may issue, under the penalty of indemnifying the parties for losses and damages should he not do so.

ART. 1323. For the validity of a marriage contract, executed by a person against whom a sentence of civil interdiction or incapacity has been rendered, or against whom a suit for the same cause has been instituted, the attendance and consent of the guardian shall be indispensable, who for this purpose shall be appointed, by the proper persons, according to the provisions of this code and of the law of civil procedure.

ART. 1324. Whenever the property brought by the spouses is not real estate, and that of the husband and wife together does not exceed a total of two thousand five hundred pesetas, and there should be no notary in the town of their residence, the marriage contract may be executed before the secretary of the municipal council and two witnesses, who shall state, on their liability, that they know said property has been delivered or that it has been brought to the marriage, as the case may be.

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The original contract or contracts shall be preserved in the registry in the archives of the proper municipality.

When, in the property brought to the marriage, whatever its value may be, there should be one or more estates, or the contracts relate to real property, they shall always be executed in a public instrument, before a notary, as prescribed in article 1321.

ART. 1325. Should the marriage be contracted in a foreign country, between a Spaniard and a foreign woman or between a foreigner and a Spanish woman, and the contracting parties should not state or stipulate anything with regard to their property, it shall be understood, when the husband is a Spaniard, that he marries under the system of the legal conjugal partnership, and when the wife is a Spaniard that she marries under the system of laws in force in the husband's country, all without prejudice to what is established in this code with regard to real property.

ART. 1326. All that is agreed to in the stipulations or contracts referred to in the preceding articles, in contemplation of a future marriage, shall be void and of no effect in case the marriage does not take place.

CHAPTER SECOND.

Gifts by reason of marriage.

ART. 1327. Gifts by reason of marriage are those bestowed before its celebration, in consideration of the same, and in favor of one or of both spouses.

ART. 1328. These gifts are governed by the rules established in title second, book third, in so far as they are not modified by the following articles.

ART. 1329. Minors may bestow and receive gifts in their antenuptial contracts, provided they are authorized by persons who must give their consent to contract marriage.

ART. 1330. Acceptance is not required for the validity of such gifts.

ART. 1331. Affianced persons may give each other in their marriage contract as much as the tenth part of their actual property, and with regard to future property in case of death, only a portion within the limit fixed by the provisions of this code relating to testate succession.

ART. 1332. The donor, by reason of marriage, must free the property bestowed as a gift from mortgages and any other charges thereon, except annuities (*censos*) and easements, unless in the marriage stipulations or contract the contrary may have been specified.

ART. 1333. A gift bestowed by reason of marriage may be revoked only in the following cases:

1. If it should be conditional and the condition should not be fulfilled.
2. If the marriage should not take place.
3. If the persons should marry without having obtained the consent in accordance with the provisions of rule 2, article 50, or when the marriage is annulled and there should exist bad faith on the part of one of the spouses, in accordance with No. 3, article 73 of this code.

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ART. 1334. All gifts between spouses bestowed during the marriage shall be void.

Moderate gifts which spouses bestow on each other on festive days for the family are not included in this rule.

ART. 1335. All gifts bestowed during marriage by one of the spouses upon the children, whom the other spouse may have had by another marriage, or upon the persons of whom he or she is a presumptive heir, at the time of the gift, shall be void.

CHAPTER THIRD.

Dowry.

SECTION FIRST.—*The creation and guarantee of dowry.*

ART. 1336. A dowry is composed of the property and rights brought as such by the wife to the marriage at the time of contracting it, and of those which she acquires during the same by gift, inheritance, or legacy, as dowry property.

ART. 1337. Real property acquired during the marriage shall also be considered as dowry in the following cases:

1. When it is exchanged for other dowry property.
2. By right of redemption belonging to the wife.
3. By delivery in payment of the dowry.
4. By purchase with money belonging to the dowry.

ART. 1338. The parents and relatives of the spouses and the persons not belonging to the family may create the dowry in favor of the wife, either before or after the celebration of the marriage.

The husband may also create it before the marriage, but not after it.

ART. 1339. A dowry created before or at the time of the celebration of the marriage shall be governed in all that is not provided in this chapter by the rules for gifts made in consideration thereof. A dowry created after the marriage shall be governed by the rules for ordinary gifts.

ART. 1340. The father or the mother, or whichever one of them is alive, is bound to give a dowry to his or her legitimate daughters, except in the cases in which they should need their consent, according to law, to contract marriage and marry without obtaining it.

ART. 1341. The obligatory dowry referred to in the preceding article shall consist in a moiety of the presumptive rigorous legal portion. Should the daughter have property equivalent to the moiety of her legal portion, this obligation shall cease, and should the value of the property not cover the moiety of the legal portion, the donor shall supply the balance required to complete it.

In any case, it is prohibited to make investigations with regard to the fortune of the parents in order to determine the amount of the dowry, and the courts, in an act of voluntary jurisdiction, shall regulate it without any further investigation than the statements of the

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parents who are to give the dowry and those of the two nearest male relatives of the daughter, who are of age, one of the paternal line and the other of the maternal, residing in the same place or within the judicial district.

In the absence of relatives of age, the courts shall decide, in the exercise of their discretion, by the statements of the parents only.

ART. 1342. The parents may comply with the obligation of giving dowries to their daughters, either by delivering to them the principal of the dowry or by paying them an annual income as fruits or interest thereof.

ART. 1343. When the husband alone or both spouses jointly create a dowry for their daughters, it shall be paid from the property of the conjugal partnership. Should there be no property, it shall be paid by moieties, or in the proportion in which the parents may have, respectively, bound themselves, with the property belonging to each spouse. If the wife alone should grant the dowry, what she has given or promised shall be taken from her own property.

ART. 1344. The dowry acknowledged by the husband, the delivery of which does not appear, or appears only in a private instrument, shall produce no other effect than that of a personal obligation.

ART. 1345. Notwithstanding the provisions of the foregoing article, the wife in whose favor an acknowledged dowry has been created by the husband before the celebration of the marriage, or within the first year thereof, may demand at any time that the said husband secure it by a mortgage, provided she judicially proves the existence of the dowry property or of other similar or equivalent property at the time she instituted her claim.

ART. 1346. Dowry may be either appraised or unappraised.

It shall be appraised, if the property of which it consists was appraised, at the time of the creation of the dowry, its ownership being transferred to the husband, who became obliged to return its value.

It shall be unappraised if the wife retains the ownership of the property, whether appraised or not, and the husband remains bound to return the same property.

If the marriage contract should not state the kind of dowry, it shall be considered as unappraised.

ART. 1347. The increase or the reduction of the appraised dowry shall be for the account of the husband, who shall remain bound only to return the value at which he received it and to guarantee the rights of the wife in the manner prescribed in the following articles.

ART. 1348. If the husband who may have received the appraised dowry believes himself prejudiced by its appraisal, he may request that the error or injury be remedied.

ART. 1349. The husband is bound:

1. To record in his name and to mortgage in favor of his wife the real property and property rights which he received by way of appraised dowry, or other sufficient ones to secure the appraised value thereof.

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2. To secure with a sufficient special mortgage all other property which may have been delivered to him by way of appraised dowry.

ART. 1350. The sum which must be secured by reason of the appraised dowry shall not exceed the amount of the valuation, and if that of said dowry be reduced, the mortgage shall be reduced in the same proportion.

ART. 1351. The mortgage created by the husband in favor of the wife shall secure the restitution of the property or its appraised value in the cases in which this must take place according to law and with the limitations therein specified, and it shall become of no effect and may be canceled when, for any legal cause whatsoever, the husband may be exempted from the obligation of making the restitution.

ART. 1352. A married woman of age may herself demand the creation of the mortgage and the record of property referred to in article 1349.

Should she not as yet have celebrated the marriage, or if, having celebrated it, she be a minor, said right must be enforced in her name, and the determination of the sufficiency of the mortgage which is created shall be passed upon by the father, the mother, or the person who may have given the dowry or the property to be secured.

In the absence of these persons, and when the woman is a minor, married or not, the guardian, the *protutor*, family council, or any of its members, shall require that the same rights be enforced.

ART. 1353. If the guardian, *protutor*, or the family council do not demand the creation of the mortgage, the *fiscal* shall officially, or at the instance of any other person, demand that the husband be compelled to execute the same.

Municipal judges shall also be obliged to insist that the department of public prosecution shall comply with the provisions of the preceding paragraph.

ART. 1354. Should the husband have no property of his own upon which to create the mortgage referred to in article 1349, he shall remain bound to create it on the first real estate or property rights he may acquire.

ART. 1355. Whenever all or a part of the property which constitutes an appraised dowry should consist of public securities or bonds which can be quoted, and as long as their value is not secured by the mortgage which the husband is bound to create, the titles, records, or documents representing it shall be deposited, in the name of the wife and with the knowledge of the husband, in any of the public institutions designated for that purpose.

ART. 1356. In cases in which the husband should be obliged to secure with a mortgage personal property belonging to an unappraised dowry, the provisions of articles 1349 to 1355, relating to appraised dowries, shall be applicable.

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SECTION SECOND.—*Administration and usufruct of the dowry.*

ART. 1357. The husband is the administrator and usufructuary of the property which may constitute the unappraised dowry, with the rights and obligations pertaining to the administration and the usufruct, reserving the modifications mentioned in the following articles:

ART. 1358. The husband is not bound to give the security required of ordinary usufructuaries; but he is obliged to enter in the registry, if not already recorded, in the name of the wife and as unappraised dowry, all the real property and property rights which he may receive as such, and to create a special sufficient mortgage as security for his administration, usufruct, and restitution of the personal property.

ART. 1359. Notwithstanding the provisions of the two preceding articles, the husband who should receive securities which can be quoted, or perishable property, by way of appraised or unapprasied dowry, and should not have secured them with a mortgage, may, nevertheless, substitute them with other equivalent ones with the consent of the wife, should she be of age, or of the persons referred to in article 1352, should she be a minor.

He may also alienate said property with the consent of the wife, and, in a proper case, with that of the aforesaid persons, on the condition that its value be invested in other property, securities, or rights equally safe.

ART. 1360. The wife retains the ownership of the property constituting the unappraised dowry, and, consequently, any increase or decrease it may have shall also belong to her.

The husband is only liable for the deterioration which such property may suffer by his fault or negligence.

ART. 1361. The wife may alienate, incumber, or mortgage the property of the unappraised dowry, should she be of age, with the permission of the husband, and, should she be a minor, with judicial authority and with the intervention of the persons mentioned in article 1352.

Should she alienate said property, the husband shall be bound to create a mortgage, in the same manner and under the same conditions as with regard to the property of the appraised dowry.

ART. 1362. The property of the unappraised dowry shall be liable for the usual daily expenses of the family, incurred by the wife, or by her order with the tacit consent of the husband, but in this case application shall first be made of the property belonging to the conjugal partnership, and then of that belonging to the husband.

ART. 1363. The husband can not, without the consent of the wife, lease for longer than six years real property of the unappraised dowry.

In any case, the advance of income or rentals made to the husband for more than three years shall be considered void.

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ART. 1364. If the spouses, by virtue of the provisions of article 1315, should have stipulated that conjugal partnership shall not exist between them, without stating the rules by which their property is to be governed, or should the wife or her heirs renounce said partnership, the provisions of this chapter shall be observed, and the husband, in compliance with the obligations stated therein, shall receive all the fruits which would be considered as earnings of the partnership in case of its existence.

SECTION THIRD.—*Restitution of dowry.*

ART. 1365. The dowry shall be returned to the wife or to her heirs in the following cases:

1. Should the marriage be dissolved or declared void.

2. Should the administration of the dowry be transferred to the wife in the case prescribed in the second paragraph of article 225.

3. Should the courts order it in accordance with the provisions of this code.

ART. 1366. The restitution of an appraised dowry shall be made by the husband or his heirs delivering to the wife or to her heirs the value at which it was appraised when the husband received the same.

From the value shall be deducted:

1. The dowry created in favor of the daughters, in so far as it can be charged against the private property of the wife, in accordance with article 1343.

2. The debts contracted by the wife before the marriage and which the husband may have paid.

ART. 1367. The real property of the unappraised dowry shall be restored in the condition in which it may be; and should it have been alienated, the proceeds of the sale shall be delivered, deducting what may have been applied to the payment of the exclusive obligations of the wife.

ART. 1368. The payment of the expenses and the improvements, made by the husband in the unappraised dowry property, shall be governed by the provisions relating to the possessor in good faith.

ART. 1369. After the marriage has been dissolved or declared void, the husband or his heirs may be compelled to the immediate restitution of the real and personal property of the unappraised dowry.

ART. 1370. Until one year, to be counted from the dissolution of the marriage, has elapsed, neither the husband nor his heirs can be required to return the money, the perishable property and public securities which do not exist totally or in part upon the dissolution of the conjugal partnership.

ART. 1371. The husband or his heirs shall pay to the wife or to her heirs, from the date of the dissolution of the marriage until the restitution of the dowry, the legal interest on what they must pay in money on the amount of the perishable property and what may be earned by

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the public securities or credits in the meantime, according to their condition or character, without prejudice to the provisions of article 1379.

ART. 1372. In the absence of an agreement between the persons interested, or of an express stipulation in the marriage contract, the assets of unappraised dowry, or the part thereof which may not be restored in the same property which may have constituted the dowry, or in that which may have substituted the same, shall be restored and paid in money.

From this rule is excepted the restitution of the value of personal dowry property which may not exist and which may be paid with other personal property of the same kind, should there be any, in the conjugal partnership.

The restitution of unappraised perishable property shall be made with an equal amount of property of the same kind.

ART. 1373. In the same manner as designated in the preceding article there shall be restored the part of the dowry assets consisting—

1. Of marriage gifts legally bestowed by the husband upon the wife to take effect after his death, excepting the provisions with regard to the spouse who may have acted in bad faith in the case of the annulment of the marriage, and in that of article 1440.

2. Of indemnities which the husband may owe his wife in accordance with this code.

ART. 1374. The conjugal couch, with whatever constitutes it, and the clothing and dresses for ordinary use of the widow shall be delivered to her without being charged to her dowry.

ART. 1375. The credits or rights brought to the marriage by way of unappraised dowry, or assigned with this character, shall be delivered in the condition in which they are at the time of the dissolution of the marriage, unless through negligence of the husband said credits may not have been collected or may have become unrecoverable, in which case the wife and her heirs shall have a right to demand their value.

ART. 1376. When two or more dowries are to be restored at the same time, each of them shall be paid with the property which may exist and originally belonged to them, respectively, and in their absence, if the estate inventoried should not be sufficient to cover both of them, their payment shall be effected according to priority of time.

ART. 1377. For the liquidation and restitution of the unappraised dowry, the following items shall be deducted should they have been paid by the husband:

1. The amount of the judicial costs and expenses incurred in the collection and defense of the dowry.

2. The debts and obligations inherent to or affected by the dowry, which in accordance with the marriage contract or with the provisions of this code should not be chargeable to the conjugal partnership.

3. The sums for which the wife may be specially liable, in accordance with the provisions of this code.

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ART. 1378. At the time of the restitution of the dowry, the marriage gifts legally bestowed on the husband by his wife shall be paid to him without prejudice to the provisions of this code for the case of separation of property, or that of annullment of the marriage in which bad faith may have existed on the part of one of the spouses.

ART. 1379. Should the marriage be dissolved by the death of the wife, the interest or fruits of the dowry to be restored shall run in favor of the heirs from the day of the dissolution of the marriage.

Should the marriage be dissolved by the death of the husband, the wife may choose between demanding the interest and fruits of the dowry for one year or that support be given her from the estate of the inheritance of the husband. In any case, the widow shall receive from the funds of the inheritance the value of the mourning apparel.

ART. 1380. After the marriage has been dissolved, the pending fruits or rents shall be divided pro rata among the surviving spouse and the heirs of the deceased in accordance with the rules established for a case in which the usufruct ceases.

CHAPTER FOURTH.

Paraphernal property.

ART. 1381. Paraphernal property is that which the wife brings to the marriage without being included in the dowry and that she may acquire after the creation of the same without being added thereto.

ART. 1382. The wife retains the ownership of the paraphernal property.

ART. 1383. The husband can not institute actions of any kind whatsoever with regard to the paraphernal property without the intervention or consent of the wife.

ART. 1384. The wife shall have the management of the paraphernal property unless she has delivered the same to her husband, before a notary, in order that he may administer said property.

In such case the husband is obliged to create a mortgage for the value of the personal property he may receive, or to secure said property, in the manner established for dowry property.

ART. 1385. The fruits of the paraphernal property form a part of the assets of the conjugal partnership, and are liable for the payment of the marriage expenses.

The property itself also shall be liable, in the case of article 1362, provided that of the husband and the dowry property should be insufficient to cover the liabilities referred to therein.

ART. 1386. The personal obligations of the husband can not be paid out of the fruits of the paraphernal property unless it be proven that they were incurred for the benefit of the family.

ART. 1387. The wife can not alienate, encumber, or mortgage the paraphernal property without the permission of the husband, nor appear in court to litigate with regard to the same, unless she has been judicially authorized for the purpose.

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ART. 1388. When the paraphernal property, the administration of which is reserved by the wife, should consist in money or public securities or valuable personal property, the husband shall have a right to demand that said property be deposited or invested in such manner that the alienation or pledge of the same would be impossible without his consent.

ART. 1389. The husband, to whom the paraphernal properly may have been delivered, shall be subject, with regard to the management of the same, to the rules established with regard to the property of the unappraised dowry.

ART. 1390. The alienation of the paraphernal property entitles the wife to demand the creation of a mortgage for the amount the husband may have received. The husband as well as the wife, in a proper case, may exercise, with regard to the proceeds of the sale, the right granted them by articles 1384 and 1388.

ART. 1391. The return of the paraphernal property, the administration of which has been turned over to the husband, shall take place in the same cases and in the same manner as that of the unappraised dowry property.

CHAPTER FIFTH.

Conjugal partnership.

SECTION FIRST —*General provisions.*

ART. 1392. By virtue of the conjugal partnership the earnings or profits indiscriminately obtained by either of the spouses during the marriage shall belong to the husband and the wife, share and share alike, upon the dissolution of the marriage.

ART. 1393. The conjugal partnership shall always begin on the same day that the marriage is celebrated. Any stipulation to the contrary shall be void.

ART. 1394. This partnership can not be renounced during the marriage, except in case of judicial separation.

When the renunciation should take place by reason of a separation, or after the marriage has been dissolved or annulled, said renunciation shall be included in a public instrument, and the creditors shall have the right granted them in article 1001.

ART. 1395. The conjugal partnership shall be governed by the rules of articles of partnership in all that does not conflict with the express provisions of this chapter.

SECTION SECOND.—*Property belonging to each of the spouses.*

ART. 1396. The following is the separate property of each of the spouses:

1. That brought to the marriage as his or her own.
2. That acquired for a good consideration by either of them during the marriage.

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3. That acquired by right of redemption or by exchange for other property belonging to one of the spouses only.

4. That bought with money belonging exclusively to the wife or to the husband.

ART. 1397. A person giving or promising capital to the husband shall not be subject to eviction, except in case of fraud.

ART. 1398. Property bestowed as a gift or left by will jointly to the spouses and with a designation of specified shares shall belong as dowry to the wife and as capital to the husband in the proportion fixed by the donor or testator; and, in the absence of said designation, share and share alike, without prejudice to the provisions of article 637.

ART. 1399. Should the gifts be bestowed for a valuable consideration, the amount of the charges shall be deducted from the dowry, or from the capital of the spouse who bestows them, provided they have been borne by the conjugal partnership.

ART. 1400. In case that any credit, payable within a certain number of years, or a pension for life belongs to either of the spouses, the provisions of articles 1402 and 1403 shall be observed in order to determine what constitutes the dowry and what forms the capital of the husband.

SECTION THIRD.—*Property of the conjugal partnership.*

ART. 1401. To the conjugal partnership belong:

1. Property acquired for a valuable consideration during the marriage at the expense of the partnership property, whether the acquisition is made for the partnership or for one of the spouses only.

2. That obtained by the industry, salaries, or work of the spouses or of either of them.

3. The fruits, income, or interest collected or accrued during the marriage, coming from the partnership property, or from that which belongs to either one of the spouses.

ART. 1402. Whenever a sum or credit, payable in a certain number of years, belongs to one of the spouses, the sums collected for installments due during the marriage shall not be partnership property, but shall be considered as capital of the husband or of the wife, according to whom the credit belongs.

ART. 1403. The right to a usufruct or pension, belonging to one of the spouses, either in perpetuity or for life, shall form part of his or her own property; but the fruits, pensions, and interest due, during the marriage, shall be partnership property.

In this provision is included the usufruct which the spouses have in the property of their children, even though they be of another marriage.

ART. 1404. The useful expenses made on behalf of the private property of either one of the spouses through advances made by the partnership or by the industry of husband or wife are partnership property.

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Buildings constructed during the marriage, on land belonging to one of the spouses shall also belong to the partnership, but the value of the land shall be paid to the spouse owning the same.

ART. 1405. Whenever the dowry or the capital belonging to the husband should consist, in whole or in part, of cattle existing at the time of the dissolution of the partnership, the heads of cattle exceeding the number which were brought to the marriage, shall be considered as partnership property.

ART. 1406. The earnings obtained by the husband or wife by gambling, or proceeding from other causes exempted from restitution, shall belong to the conjugal partnership, without prejudice in a proper case, to the provisions of the penal code.

ART. 1407. All the property of the marriage shall be considered as partnership property until it is proven that it belongs exclusively to the husband or to the wife.

SECTION FOURTH.—*Charges and obligations of the conjugal partnership.*

ART. 1408. The conjugal partnership shall be liable for:

1. All the debts and obligations contracted during the marriage by the husband, and also for those contracted by the wife in the cases in which she can legally bind the partnership.

2. The arrears or interest, matured during the marriage, of obligations which affect the private property of the spouses as well as the partnership property.

3. The minor repairs or of mere preservation, made during the marriage, to the private property of the husband or the wife. Extensive repairs shall not be chargeable to the partnership.

4. Extensive or minor repairs to the property of the partnership.

5. The support of the family and the education of the children in common, and of the legitimate children of one of the spouses only.

ART. 1409. The conjugal partnership shall also bear the amount of what has been bestowed as a gift or promised to the children in common by the husband, only for their establishment or for a profession, or by both spouses by common consent, should they not have agreed that it should be paid in whole or in part out of the private property of one of them.

ART. 1410. The payment of debts contracted by the husband or by the wife, before marriage, shall not be borne by the partnership.

Neither shall it bear the payment of fines or of pecuniary condemnations which may be imposed on either of them.

However, the payment of debts contracted by the husband or by the wife, prior to the marriage, and that of fines and condemnations imposed on either of them, may be claimed against the partnership property, after covering the expenses, mentioned in article 1408, if the debtor spouse should have no private capital, or were it insufficient; but at the time of the liquidation of the partnership the payments, made for the specified causes, shall be charged to said spouse.

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ART. 1411. What has been lost and paid for during marriage by either of the spouses, in any kind of game whatsoever, shall not diminish his or her respective share in the partnership.

Whatever has been lost and not paid for by either of the spouses in licit games shall be charged to the conjugal partnership.

SECTION FIFTH.—*Administration of the conjugal partnership.*

ART. 1412. The husband is the administrator of the conjugal partnership, with the exception of what is prescribed in article 59.

ART. 1413. Besides the powers the husband has as administrator, he may alienate and encumber for a valuable consideration the property of the conjugal partnership without the consent of the wife.

Nevertheless, every alienation or agreement which the husband may make with regard to said property in contravention of this code or in fraud of the wife shall not prejudice her nor her heirs.

ART. 1414. The husband may dispose by will of his half of the property of the conjugal partnership only.

ART. 1415. The husband may dispose of the property of the conjugal partnership for the purposes mentioned in article 1409.

He may also bestow moderate gifts for objects of piety or beneficence but without reserving to himself the usufruct.

ART. 1416. The wife can not bind the property of the conjugal partnership without the consent of the husband.

The cases prescribed in articles 1362, 1441, and 1442 are excepted from this rule.

SECTION SIXTH.—*Dissolution of the conjugal partnership.*

ART. 1417. The conjugal partnership expires on the dissolution of the marriage or when it is declared void.

The spouse who, by reason of his or her bad faith, caused the annulment, shall not receive any share of the property of the partnership.

The conjugal partnership shall also terminate in the cases mentioned in article 1433.

SECTION SEVENTH.—*Liquidation of the property of the conjugal partnership.*

ART. 1418. Upon the dissolution of the partnership an inventory shall immediately be made; but the same shall not be required for the liquidation:

1. When, after the partnership has been dissolved, one of the spouses or his or her legal representatives have at the proper time renounced its effects and consequences.

2. When the separation of the property may have preceded the dissolution of the partnership.

3. In the case to which the second paragraph of the preceding article refers.

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In case of renunciation, the right granted creditors by article 1101 shall always be reserved.

ART. 1419. The inventory shall include specifically for the purpose of collating them the sums which, having been paid by the conjugal partnership, are to be deducted from the dowry or from the capital of the husband, in accordance with articles 1366, 1377, and 1427.

The amount of the gifts and alienations which must be considered illegal or fraudulent, in accordance with article 1413, shall also be brought to collation.

ART. 1420. There shall not be included in the inventory the effects constituting the conjugal couch ordinarily used. These effects, as well as the clothing and dresses ordinarily used by the deceased spouse, shall be delivered to the surviving one.

ART. 1421. After the inventory has been concluded the dowry of the wife shall first be liquidated and paid, according to the rules which for its restitution are fixed in section 3, chapter 3, of this title, and subject to the provisions of the following articles.

ART. 1422. After the dowry and the parapherna of the wife have been paid, the debts, charges, and obligations of the partnership shall be paid.

If the inventoried estate should not be sufficient to satisfy all the provisions of this and the preceding article, those of title 17 of this book shall be observed.

ART. 1423. After the debts, charges, and obligations of the partnership have been paid, the capital of the husband shall be liquidated and paid, in so far as the inventoried estate may reach, making the proper deductions according to the same rules which are prescribed in article 1366, with regard to dowry.

ART. 1424. After the deductions from the inventoried estate specified in the three preceding articles have been made, the remainder of the same estate shall constitute the assets of the conjugal partnership.

ART. 1425. The losses or deterioration which the personal property, belonging to either of the spouses, may have suffered even though by a fortuitous event, shall be paid out of the conjugal property, should there be any.

Those suffered by the real property shall not be payable in any case, except those falling upon the dowry property and which may have been caused by the fault of the husband, and which shall be indemnified in the manner prescribed in articles 1360 and 1373.

ART. 1426. The net remainder of the partnership property shall be divided, share and share alike, between the husband and the wife, or their respective heirs.

ART. 1427. The mourning apparel of the widow shall be paid out of the estate of the inheritance of the husband, according to the provisions of article 1379. The heirs of the husband shall pay it according to his standing and means.

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ART. 1428. With regard to making the inventory, rules for the appraisal and sale of the property belonging to the conjugal partnership, guaranty and security for the respective dowries, and all other particulars, not expressly fixed in this chapter, the prescriptions of section fifth, chapter fifth, title third, book third, and sections second and third, chapter third of this title shall be observed.

ART. 1429. When the conjugal partnership is dissolved by the annulment of the marriage, the provisions of articles 1373, 1378, 1417, and 1440 shall be observed; and should it be dissolved by reason of the separation of the property of the spouses the provisions of chapter sixth of this title shall be observed.

ART. 1430. Support shall be given out of the property owned in common to the surviving spouse and to his or her children, pending the liquidation of the inventoried estate and until their share has been delivered to them, but it shall be deducted from their portion in so far as it exceeds what they should have received as fruits or income.

ART. 1431. Whenever the liquidation of the partnership property of two or more marriages contracted by the same person may have to be made simultaneously in order to determine the funds of each partnership, every kind of proof shall be admitted, in the absence of inventories, and in case of doubt, the partnership property shall be divided between the different partnerships in proportion to the time of their duration and to the property owned by the respective spouses.

CHAPTER SIXTH.

Separation of the property of the spouses and its administration by the wife during the marriage.

ART. 1432. In the absence of a specific declaration in the marriage contract, the separation of the property of the spouses, during the marriage, shall not take place except by virtue of a judicial decree, except in the case prescribed by article 50.

ART. 1433. The husband and the wife may request the separation of the property, and it shall be decreed, whenever the spouse of the plaintiff should have been condemned to a penalty which includes civil interdiction, or should have been declared an absentee, or should have given cause for divorce.

In order that the separation may be decreed, it shall be sufficient to present the final judgment rendered against the guilty or absent spouse in each one of the three cases above mentioned.

ART. 1434. After the separation of property has been ordered the conjugal partnership shall be dissolved, and its liquidation shall be made according to the provisions of this code.

Nevertheless, the husband and the wife shall mutually attend to their support during the separation, and to the support of the children, as well as to their education, each one in proportion to his or her respective means.

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ART. 1435. The power to administer the property of the marriage granted to the husband by this code shall continue in force if the separation should have been granted at his instance; but, in such case, the wife shall not have any right to the subsequent profits of the partnership, and the rights and obligations of the husband shall be governed by the provisions of sections second and third, chapter third of this title.

ART. 1436. If the separation should have been granted at the instance of the wife by reason of the civil interdiction of the husband, the administration of all the property of the marriage and the right to all the future partnership property shall be transferred to the wife, to the exclusion of the husband.

If the separation should be granted because the husband has been declared an absentee, or because he has given cause for divorce, the wife shall enter upon the administration of her dowry and of all further property which may have been awarded to her as a result of the liquidation.

In all the cases referred to in this article the wife shall be obliged to comply with all that is prescribed in the second paragraph of article 1434.

ART. 1437. The suit for separation and the final judgment declaring it, when involving real property, must be entered and recorded, respectively, in the proper registries of property.

ART. 1438. The separation of the property shall not prejudice rights previously acquired by creditors.

ART. 1439. If the separation should cease by reconciliation, in cases of divorce, or because in the other cases the causes have disappeared, the property of the marriage shall again be governed by the same rules as before the separation, without prejudice to what may have been legally done during the same.

At the time of reunion the spouses shall specify in a public instrument the property which they bring anew, and said property shall be that forming the private estate of each one of them respectively.

In the case mentioned in this article, all said property shall always be considered as new property brought to the marriage, even though it be the same, either partially or wholly, which existed before the liquidation made by reason of the separation.

ART. 1440. The separation shall not entitle the spouses to exercise the rights stipulated under the presumption of death of one of them, nor those granted them by articles 1374 and 1420, but it shall not prejudice them in their exercise, when such case occurs, excepting the provisions of article 73.

ART. 1441. The administration of the property belonging to the marriage shall be transferred to the wife:

1. Whenever she is the guardian of her husband in accordance with article 220.

2. When she requests the declaration of absence of the said husband, in accordance with articles 183 and 185.

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3. In the case of the first paragraph of article 1436.

The courts shall also confer the administration upon the wife, with the limitations they may consider advisable, if the husband should be a fugitive or should have been declared contumacious in a criminal cause, or if, being absolutely disqualified for the administration, he should have taken no steps with regard thereto.

ART. 1442. The wife, upon whom the administration of all the property of the marriage may devolve, shall have, with regard thereto, the identical powers and liabilities as the husband when he exercises it, but always subject to the provisions contained in the last paragraph of the preceding article and in article 1444.

ART. 1443. The administration of her dowry shall be transferred to the wife in the case prescribed in article 225, and when the court orders it by virtue of the provisions of article 1441, but she shall remain subject to what is prescribed in the second paragraph of article 1434.

GENERAL PROVISION.

ART. 1444. The wife can neither alienate nor encumber during the marriage, without judicial permission, the real property which may have pertained to her in case of separation, nor that, the administration of which may have been transferred to her.

The permission shall be granted provided the advisability or necessity for the alienation be proven.

When said alienation involves public securities or stock of commercial enterprises and companies and can not be postponed without serious or imminent injury to the estate in administration, the wife, with the intervention of an agent or broker, may sell them, placing the proceeds in judicial deposit until the approval of the judge or court of competent jurisdiction has been obtained.

The agent or broker shall always be personally liable for the making of the consignation or deposit referred to in the preceding paragraph.

TITLE IV.

Contract of purchase and sale.

CHAPTER FIRST.

Nature and form of this contract.

ART. 1445. By a contract of purchase and sale one of the contracting parties binds himself to deliver a specified thing and the other to pay a certain price therefor in money or in something representing the same.

ART. 1446. If the price of the sale should consist partly in money and partly in something else, the contract shall be judged by the manifest intention of the contracting parties. When this intention should not appear, the contract shall be considered as a barter if the value of the thing given as a part of the price exceeds that of the money or its equivalent, and otherwise it shall be considered as a sale.

ART. 1447. In order that the price may be considered fixed, it shall be sufficient that it be fixed with regard to another determinate thing

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also specific, or that the determination of the same be left to the judgment of a specified person.

Should such person not be able to or not wish to fix the price, the contract shall be of no effect.

ART. 1448. The price of securities, grain, liquids, and of other perishable things shall also be considered as fixed when the prices fixed are the same as the things, if sold, would have on a certain day on exchange or on the market, or when a certain amount is fixed above or below the price of such day, on exchange or on the market, provided said price be fixed.

ART. 1449. The determination of the price can never be left to the judgment of one of the contracting parties.

ART. 1450. The sale shall be perfected between vendor and vendee and shall be binding on both of them, if they have agreed upon the thing which is the object of the contract and upon the price, even when neither has been delivered.

ART. 1451. A promise to sell or buy, there being an agreement as to the thing and price, gives a right to the contracting parties to mutually demand the fulfillment of the contract.

Whenever the promise to purchase and sell can not be fulfilled, the provisions relating to obligations and contracts of this book shall be observed by the vendor and by the vendee, as the case may be.

ART. 1452. The injury to or the profit of the thing sold shall, after the contract has been perfected, be governed by the provisions of articles 1096 and 1182.

This rule shall be applied to the sale of perishable things, made independently and for a single price, or without consideration as to weight, number, or measure.

If the perishable things should be sold for a price fixed with regard to weight, number, or measure, the risk shall not be charged to the vendee, until they have been weighed, counted, or measured, unless the latter should be in default.

ART. 1453. A sale, made subject to approval or trial of the things sold, and the sales of things which it is usual to test or try before being received, shall always be considered as made under a condition precedent.

ART. 1454. When earnest money or a pledge has been given in the contract of purchase and sale, the contract may be rescinded, if the vendee should agree to forfeit the money or the vendor to return double the amount.

ART. 1455. The expense of the execution of the instrument shall be for the account of the vendor, and those of the first copy and those subsequent to the sale shall be charged to the vendee, unless there is an agreement to the contrary.

ART. 1456. Forcible alienation by reason of public utility shall be governed by the provisions of special laws.

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CHAPTER SECOND.

Capacity to purchase or sell.

ART. 1457. A contract of purchase and sale may be executed by all persons who, according to this code, are authorized to bind themselves, excepting the modifications contained in the following articles.

ART. 1458. The husband and the wife can not mutually sell property to each other, except in case the separation of property has been agreed upon or when a judicial separation of the said property should have taken place, authorized in accordance with the provisions of chapter sixth, title third, of this book.

ART. 1459. The following persons can not acquire by purchase, even at public or judicial auction, neither in person nor by an agent:

1. The guardian or *protutor*, the property of the person or persons who may be under their guardianship.

2. Agents, the property the administration or sale of which may have been intrusted to them.

3. Executors, the property intrusted to their care.

4. Public officials, the property of the State, municipalities, towns, and also of public institutions, the administration of which has been intrusted to them.

This provision shall apply to judges and experts who, in any manner whatsoever, take part in the sale.

5. Associate justices, judges, members of the department of public prosecution, clerks of superior and inferior courts, and officials of justice, the property and rights in litigation before the court in the jurisdiction or territory over which they exercise their respective duties, this prohibition including the act of acquiring by assignment.

From this rule shall be excepted the cases in which hereditary actions among coheirs are involved, or assignments in payment of debts, or security for the goods they may possess.

The prohibition contained in this number shall include the lawyers and solicitors with regard to the property and rights, which may be the object of the litigation, in which they may take part by virtue of their profession and office.

CHAPTER THIRD.

Effects of the contract of purchase and sale when the thing sold has been lost.

ART. 1460. If, at the time of making the sale, the thing which is the object thereof has been wholly lost, the contract shall be of no effect.

But if the thing should be lost in part only, the vendee shall choose between withdrawing from the contract or demanding the existing part, paying its price, in proportion to the total sum agreed upon.

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CHAPTER FOURTH.

Obligations of the vendor.

SECTION FIRST.—*General provision.*

ART. 1461. A vendor is bound to deliver and warrant the thing which is the object of the sale.

SECTION SECOND.—*Delivery of the thing sold.*

ART. 1462. A thing sold shall be considered as delivered, when it is placed in the hands and possession of the vendee.

When the sale should be made by means of a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if in said instrument the contrary does not appear or may be clearly inferred.

ART. 1463. With the exception of the cases mentioned in the preceding article, the delivery of personal property shall be made by the delivery of the keys of the place or depository where it is stored or kept, and by the mere consent and agreement of the contracting parties, if the thing sold can not be transferred to the possession of the vendee, at the time of the sale, or if the latter already held it in his possession for any other reason.

ART. 1464. With regard to incorporeal things, the provisions of the second paragraph of article 1462 shall govern. In any other case in which it can not be applied, the placing of the titles of ownership in the possession of the vendee or the use which he may make of his right with the consent of the vendor shall be considered as a delivery.

ART. 1465. The costs of the delivery of the thing sold shall be borne by the vendor, and those of its removal or transportation by the vendee, except in case of a special stipulation.

ART. 1466. The vendor shall not be bound to deliver the thing sold, if the vendee should not have paid the price, or if a period for the payment has not been fixed in the contract.

ART. 1467. Neither shall the vendor be obliged to deliver the thing sold when a delay or time for payment may have been agreed upon, and it should be discovered after the sale that the vendee is insolvent to such a degree that the vendor is in imminent danger of losing the price.

From this rule is excepted the case in which the vendee gives security for the payment within the time agreed upon.

ART. 1468. The vendor must deliver the thing sold in its condition at the time of the completion of the contract.

All the fruits shall belong to the vendee from the day on which the contract was perfected.

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ART. 1469. The obligation to deliver the thing sold includes that of placing in the possession of the vendee all that is mentioned in the contract, according to the following rules:

If the sale of real property should be made with a statement of its area, at the rate of a certain price for a unit of measure or number, the vendor shall be obliged to deliver to the vendee, if the latter should require it, all that may have been mentioned in the contract; but should this not be possible, the vendee may choose between a proportional reduction in the price or the rescission of the contract, provided that in the latter case the decrease in the real estate is not less than one-tenth of the area given it.

The same shall be done, even when the area appears to be the same, if any part of the real estate is not of the character mentioned in the contract.

The rescission in such case shall only take place at the will of the vendee, when the inferior value of the thing sold exceeds one-tenth of the price agreed upon.

ART. 1470. If in the case of the preceding article there is greater area or number in real estate than those mentioned in the contract, the vendee shall be obliged to pay the price of the excess if the greater area or number should not exceed one-twentieth of those mentioned in the contract; but should it surpass said one-twentieth, the vendee may choose between paying the greater value of the estate or withdrawing from the contract.

ART. 1471. In the sale of real estate made for a fixed price and not at the rate of a specified sum for a unit of measure or number, the increase or decrease of the same shall not be considered, even when greater or less area or amount than that stated in the contract may be found.

The same shall take place when two or more estates should be sold for a single price; but, if besides mentioning the boundaries, which are indispensable in every conveyance of real estate, their area and number should be designated in the contract, the vendor shall be obliged to deliver all that is included within said boundaries, even when they exceed the area or number specified in the contract; and, should he not be able to do it, he shall suffer a reduction in the price, in proportion to what is lacking in the area or number, unless the contract be annulled by reason of the vendee not accepting the failure to deliver what had been stipulated.

ART. 1472. The actions arising from the three preceding articles shall prescribe after six months, counted from the day of the delivery.

ART. 1473. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be personal property.

Should it be real property, it shall belong to the person acquiring it who first recorded it in the registry.

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Should there be no entry, the property shall belong to the person who first took possession of it in good faith, and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.

SECTION THIRD.— *Warranty.*

ART. 1474. By virtue of the warranty referred to in article 1461 the vendor shall warrant to the vendee:

1. The legal and peaceful possession of the thing sold.
2. That there are no hidden faults or defects therein.

§ 1º

Warranty in case of eviction.

ART. 1475. Eviction shall take place when by a final judgment, and by virtue of a right prior to the sale, the vendee is deprived of the whole or of a part of the thing purchased.

The vendor shall be liable for the eviction even though no stipulation has been included in the contract on the subject.

The contracting parties may, however, increase, decrease, or suppress this legal obligation of the vendor.

ART. 1476. Any stipulatiou exempting the vendor from obligation of answering for the eviction shall be void, provided there should be bad faith on his part.

ART. 1477. If a vendee should have renounced the right of warranty in the case of eviction and it occurs, the vendor must deliver only the price which the thing had at the time of the eviction, unless the vendee has made the renunciation knowing the risk of eviction and submitting to its consequences.

ART. 1478. If a warranty should have been stipulated, or if nothing has been agreed upon on this point, if the eviction has taken place, the vendee shall have the right to demand of the vendor—

1. The restitution of the price which the thing sold had at the time of the eviction, whether it be greater or less than that of the sale.
2. The fruits or proceeds, should he have been adjudged to deliver them to the person who won the suit instituted against him.
3. The costs of the suit which caused the eviction, and, in a proper case, those of the suit instituted against the vendor for the warranty.
4. The expenses of the contract, if the vendee should have paid them.
5. The damages and interest and the voluntary expenses or of mere recreation or ormentation, should the sale have been made in bad faith.

ART. 1479. Should the vendee lose, on account of the eviction, a part of the thing sold of such importance, in relation to the whole, that he would not have purchased it without said part, he may demand the rescission of the contract; but with the obligation to return the thing without other charges than those it had when he acquired it.

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The same provision shall be observed when two or more things should be jointly sold for a lump sum, or a special price for each one of them, should it clearly appear that the vendee would not have purchased one without the other.

ART. 1480. A warranty can not be demanded until a final judgment may have been rendered by which the vendee should be adjudged to lose the thing acquired or a part thereof.

ART. 1481. The vendor shall be obligated to the proper warranty whenever it is proved that he was given notice of the suit for eviction at the instance of the vendee. In the absence of this notice the vendor shall not be bound to the warranty.

ART. 1482. A defendant vendee shall request within the period fixed in the law of civil procedure for answering the suit that notice thereof be given to the vendor or vendors within the shortest period possible.

This notification shall be made in the manner established in said law for the summoning of defendants.

The time to answer granted to the vendee shall be suspended until the expiration of that granted the vendor or vendors to appear and answer the complaint, and which periods shall be the same as those granted all defendants by the aforesaid law of civil procedure, counted from the notification prescribed in the first paragraph of this article.

Should the persons summoned for eviction not appear in the proper time and manner, the period in which to answer the suit shall continue with regard to the vendee.

ART. 1483. If the estate sold should be encumbered by any non-apparent burden or easement, not mentioned in the instrument, of such a nature that it must be presumed that the vendee would not have acquired it had he been aware thereof, he may request the rescission of the contract, unless he should prefer the proper indemnity.

During a year, to be counted from the date of the execution of the instrument, the vendee may either institute the rescissory action or request the indemnity.

After the lapse of one year, he can only demand such indemnity within an equal period, to be counted from the date on which the incumbrance or easement was discovered by him.

§ 2?

Warranty against hidden defects of or burdens on the thing sold.

ART. 1484. The vendor is bound to give a warranty against hidden defects which the thing sold may have should they render it unfit for the use to which it was destined, or if they should diminish said use in such manner that had the vendee had knowledge thereof he would not have acquired it or would have given a lower price for it; but said vendor shall not be liable for the patent defects or those which may be visible, neither for those which are not visible if the vendee should be an expert and who by reason of his trade or profession should easily perceive them.

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ART. 1485. The vendor is liable to the vendee for the warranty against faults or hidden defects in the things sold, even when they should be unknown to him.

This provision shall not obtain if the contrary should have been stipulated and the vendor should not have been aware of said faults or hidden defects.

ART. 1486. In the cases of the two preceding articles the vendee may choose between withdrawing from the contract, the expenses which he may have incurred being returned to him, or demanding a proportional reduction of the price, according to the judgment of experts.

If the vendor knew of the faults or hidden defects in the thing sold and did not give notice thereof to the vendee, the latter shall have the same option, and, furthermore, be indemnified for the losses and damages should he choose the rescission.

ART. 1487. If the thing sold should be lost on account of hidden faults and the vendor was aware of them, he shall bear the loss, and return the price and pay the expenses of the contract, with losses and damages. If he was not aware thereof, he shall only return the price and pay the expenses of the contract which the vendee may have paid.

ART. 1488. If the thing sold had any hidden fault at the time of the sale, and should be lost afterwards by a fortuitous event or by fault of the vendee, the latter may demand of the vendor the price he paid, deducting the value the thing had when lost.

If the vendor acted in bad faith, he must pay losses and damages to the vendee.

ART. 1489. There shall be no liability for losses and damages in judicial sales, but all the other provisions of the preceding articles shall be applied.

ART. 1490. Actions arising from the provisions of the five preceding articles shall be extinguished after six months, counted from the delivery of the thing sold.

ART. 1491. If two or more animals should be sold together, whether it be for a lump sum or for a special price for each of them, the redhibitory vice of each one shall only cause the redhibition of the same and not that of the others, unless it appears that the vendee would not have purchased the sound one or ones without the defective animal.

This is presumed when a team, yoke, pair, or set is bought, even when a special price has been fixed for each one of the animals composing the same.

ART. 1492. The provisions of the preceding article, with regard to the sale of animals, is understood as applicable also to the sale of other things.

ART. 1493. Warranty for the hidden vices of animals and cattle shall not obtain in sales made at fairs or at public auctions, nor in the sale of riding beasts, sold as condemned, except in the case prescribed in the following article.

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ART. 1494. Animals and cattle suffering from contagious diseases shall not be the object of a contract of sale. Any contract made with regard to the same shall be void.

A contract of sale of cattle and animals shall also be void, when the use or service for which they are acquired being stated, they are found to be useless therefor.

ART. 1495. If the hidden vice of animals, even if a professonal inspection has been made, should be of such a nature that the knowledge of experts is not sufficient to discover it, it shall be considered as redhibitory.

But if the veterinarian, through ignorance or bad faith, should fail to discover or to give notice of it, he shall be liable for losses and damages.

ART. 1496. The redhibitory action, based on the vices or defects of animals, must be instituted within forty days, counted from their delivery to the vendee, unless, by reason of the customs in each locality, longer or shorter periods are established.

This action in the sale of animals may only be enforced with regard to the vices and defects of the same, determined by law or by local customs.

ART. 1497. If the animal should die within three days after being bought the vendor shall be liable, provided the disease that caused the death, in the judgment of veterinarians, existed before the contract.

ART. 1498. If the sale has been rescinded the animal must be returned in the condition in which it was sold and delivered, the vendee being liable for any injury due to his negligence and which does not arise from the redhibitory vice or defect.

ART. 1499. In the sale of animals and cattle with redhibitory vices the vendee shall enjoy the privilege mentioned in article 1486; but he must make use thereof within the same period which has been respectively fixed for the exercise of the redhibitory action.

CHAPTER FIFTH.

Obligations of the vendee.

ART. 1500. The vendee is obliged to pay the price of the thing sold at the time and place stipulated in the contract.

If the time and place should not have been fixed, the payment must be made at the time and place where the thing sold is delivered.

ART. 1501. In the three following cases the vendee shall owe interest from the time the thing is delivered until the payment of the price:

1. Should it have been so stipulated.
2. Should the thing sold and delivered produce fruits or income.
3. Should he be in default in accordance with article 1100.

ART. 1502. Should the vendee be disturbed in the possession or ownership of the thing acquired, or should have reasonable grounds to fear being disturbed by an action for recovery or mortgage suit, he may suspend the payment of the price until the vendor has caused the disturbance or danger to cease, unless he gives security for the restitu-

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tion of the price, in a proper case, or should it have been stipulated that, notwithstanding any such contingency, the vendee shall be bound to make the payment.

ART. 1503. Should the vendee have reasonable grounds to fear the loss of the real property sold and its price, he may immediately request the rescission of the sale.

Should such grounds not exist, the provisions of article 1124 shall be observed.

ART. 1504. In the sale of real property, even though it may have been stipulated that in the absence of the payment of the price within the time agreed upon, the rescission of the contract shall take place by full right, the vendee may pay, even after the expiration of the period, as long as he has not been summoned either judicially or by a notarial act. After the suit has been instituted the judge can not grant him a further period.

ART. 1505. With regard to personal property, the rescission of the sale shall take place by full right for the benefit of the vendor when the vendee, before the lapse of the period fixed for the delivery of the thing, should not have appeared to receive it, or having appeared he should not have offered the price at the same time, unless a longer period has been stipulated for the payment thereof.

CHAPTER SIXTH.

Rescission of the sale.

ART. 1506. The sale shall be rescinded for the same causes as all other obligations, and furthermore for those mentioned in the preceding chapters and by conventional or legal redemption.

SECTION FIRST.—*Conventional redemption.*

ART. 1507. Conventional redemption shall take place when the vendor reserves to himself the right to recover the thing sold, with the obligation to comply with article 1518, and whatever more may have been agreed upon.

ART. 1508. The right referred to in the preceding article, in the absence of an express agreement, shall last four years counted from the date of the contract.

Should there be an agreement, the period shall not exceed ten years.

ART. 1509. If the vendor should not comply with the provisions of article 1518, the vendee shall irrevocably acquire the ownership of the thing sold.

ART. 1510. The vendor may bring his action against every possessor whose right arises from that of the vendee, even though in the second contract no mention should have been made of the conventional redemption; without prejudice to the provisions of the mortgage law with regard to third persons.

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ART. 1511. The vendee substitutes the vendor in all his rights and actions.

ART. 1512. The creditors of the vendor can only make use of the conventional redemption against the vendee after having levied upon the property of the vendor.

ART. 1513. A vendee who has made an agreement of resale of a part of an undivided estate and who should acquire the whole estate, in the case of article 404, may oblige the vendor to redeem the whole estate, if the latter wishes to make use of the redemption.

ART. 1514. If several persons, jointly and in the same contract, should sell an undivided estate under condition of redemption, none of them can exercise this right for more than his respective share.

The same shall be observed if the person alone who has sold an estate has left several heirs, in which case each of the latter can only redeem the part which he may have acquired.

ART. 1515. In the cases of the foregoing article, the vendee may demand of all the vendors and coheirs that they come to an agreement with regard to the redemption of the whole of the thing sold; and should they not do so, the vendee can not be forced to a partial redemption.

ART. 1516. Each of the co-owners of an undivided estate, who should have sold his share separately, may independently exercise the right of redemption for his respective share and the vendee can not force him to redeem the entire estate.

ART. 1517. Should the vendee leave several heirs, the action of redemption can not be exercised against each of them, except for his respective share, whether it be undivided, or whether it has been distributed among them.

But if the inheritance has been divided, and the thing sold has been awarded to one of the heirs, the action of redemption may be brought against him for the whole.

ART. 1518. The vendor can not exercise the right of redemption without returning to the vendee the price of the sale, and furthermore:

1. The expenses of the contract and any other legitimate payment made by reason of the sale.

2. The useful and necessary expenses incurred by the thing sold.

ART. 1519. If, on the execution of the sale, there should be on the estate visible or grown fruits, no indemnity or payment pro rata shall be made for those existing at the time of the redemption.

Should there have been no fruits at the time of the sale, and some exist at the time of the redemption, they shall be divided pro rata between the redeemer and the vendee, giving to the latter the share corresponding to the time he possessed the estate during the last year, counted from the date of the sale.

ART. 1520. The vendor, who should recover the thing sold, shall receive it free of all charges and mortgages imposed by the vendee,

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but he shall be obliged to respect the lease contracts executed by the latter in good faith and according to the customs of the place where it is located.

SECTION SECOND.—*Legal redemption.*

ART. 1521. Legal redemption is the right to be subrogated, with the same conditions stipulated in the contract, in the place of the person who acquires a thing by purchase or in payment of a debt.

ART. 1522. A coowner of a thing held in common may exercise the redemption in case the shares of all the other coowners, or of any of them, are sold to a third party.

When two or more coowners wish to exercise the redemption, they shall only do so pro rata with regard to the share they have in the thing owned in common.

ART. 1523. The owners of the adjacent lands shall also have the right of redemption when the sale of a rural estate is involved the area of which does not exceed one hectare.

The right referred to in the preceding paragraph is not applicable to adjacent lands which are divided by brooks, drains, ravines, roads, and other apparent easements for the benefit of other estates.

If two or more adjacent owners should make use of the redemption at the same time, the one who is owner of the adjacent land of lesser area shall be preferred; and, should both be equal in area, the person who first requested it.

ART. 1524. The right of legal redemption can not be exercised except within nine days, counted from the entry in the registry, and in the absence thereof from the time the redeemer may have had knowledge of the sale.

The redemption of coowners excludes that of adjacent owners.

ART. 1525. In legal redemptions the provisions of articles 1511 and 1518 shall be observed.

CHAPTER SEVENTH.

Assignments of credits and other incorporeal rights.

ART. 1526. The assignment of a credit, right, or action shall produce no effect against a third person but from the time the date is considered fixed, in accordance with articles 1218 and 1227.

If said assignment involves real property, from the date of its entry in the registry.

ART. 1527. A debtor who, before having knowledge of the assignment, should pay the creditor shall be released from the obligation.

ART. 1528. The sale or assignment of a credit includes that of all the accessory rights, such as the security, mortgage, pledge, or privilege.

ART. 1529. A vendor in good faith shall be liable for the existence and legitimacy of the credit at the time of the sale unless it should have been sold as doubtful, but he shall not be liable for the solvency of the debtor unless it has been expressly stipulated, or if the insolvency should be prior and public.

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Even in these cases he shall only be liable for the price received and for the expenses mentioned in No. 1 of article 1518.

The vendor in bad faith shall always be liable for the payment of all the expenses, and for the losses and damages.

ART. 1530. If the assignor in good faith should have made himself liable for the solvency of the debtor, and the contracting parties should not have stipulated anything with regard to the duration of the liability, it shall last one year only, to be counted from the assignment of the credit if the period had already matured.

If the credit should be payable within a term or period which has not yet expired, the liability shall cease one year after its maturity.

Should the credit consist of a perpetual income, the liability shall be extinguished after ten years, counted from the date of the assignment.

ART. 1531. A person who should sell an inheritance without enumerating the things of which it is composed shall only be obliged to prove that he is an heir.

ART. 1532. A person who sells for a total or lump sum certain rights, incomes, or products, as a whole, shall perform by answering for the legitimacy of the whole in general, but he shall not be obliged to warrant each of the parts of which it may be composed, unless in the case of eviction of the whole or of the greater part.

ART. 1533. Should the vendor have profited by some of the fruits, or should have received anything from the inheritance he should sell, he must pay the vendee therefor, should the contrary not have been agreed upon.

ART. 1534. The vendee must, on his part, pay to the vendor all that the latter may have paid for debts or charges on the estate and for the credits he may have against the same, unless there has been an agreement to the contrary.

ART. 1535. When a litigated credit is sold, the debtor shall have the right to extinguish the same by reimbursing the assignee for the price the latter paid for it, the judicial costs incurred by him, and the interest on the price from the day on which the same was paid.

A credit shall be considered as litigated from the day the suit relating to the same has been answered.

The debtor may make use of his right within nine days, counted from the day the assignee should demand payment of him.

ART. 1536. From the provisions of the foregoing article are excepted the assignments or sales made—

1. To a coheir or coowner of the right assigned.
2. To a creditor in payment of his credit.
3. To the possessor of an estate, subject to the right in litigation which has been assigned.

CHAPTER EIGHTH.

General provision.

ART. 1537. All that is prescribed in this title is understood subject to the provisions of the mortgage law with regard to real property.

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TITLE V.

Exchange.

ART. 1538. Exchange is a contract by which each of the contracting parties binds himself to give a thing in order to receive another.

ART. 1539. If one of the contracting parties should have received the thing promised to him in exchange, and should prove that it did not belong to the person who gave it, he can not be forced to deliver the one he offered in exchange, and he shall perform by returning the one he received.

ART. 1540. A person who loses by eviction the thing received in exchange may choose between recovering the one which he gave in exchange or demanding an indemnity for losses and damages; but he can only make use of the right to recover the thing which he delivered while said thing remains in the possession of the other party, and, without prejudice to the rights acquired thereto, in good faith in the meantime, by a third person.

ART. 1541. Exchange shall be governed by the provisions relating to sales in all that is not specially fixed in this title.

TITLE VI.

Contracts of lease.

CHAPTER FIRST.

General provisions.

ART. 1542. A lease may be of things, works, or services.

ART. 1543. In a lease of things, one of the parties thereto binds himself to give to the other the enjoyment or use of a thing for a specified time and a fixed price.

ART. 1544. In a lease of works or services, one of the parties binds himself to execute a work or to render a service to the other for a specified price.

ART. 1545. Perishable things, which are consumed by use, can not be the object of this contract.

CHAPTER SECOND.

Leases of rural and town property.

SECTION FIRST.—*General provisions.*

ART. 1546. A person who binds himself to grant the use of a thing, to execute a work, or to render a service is a lessor; and a person who acquires the use of the thing or a right to the work or service, for which he binds himself to pay, is a lessee.

ART. 1547. When the performance of a contract of verbal lease has begun and the evidence of the price agreed upon is lacking, the lessee

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shall return to the lessor the thing leased, paying him the price which for the time he has enjoyed such thing may be adjusted.

ART. 1548. The husband can not give in lease the property of the wife, the father and guardian, that of the son or minor, and the administrator of property, not having a special power, for a period exceeding six years.

ART. 1549. With regard to third persons, leases of real property, which are not duly recorded in the registry of property, shall be of no effect.

ART. 1550. Should it not be expressly forbidden in the contract of lease of things, the lessee may sublet the whole or a part of the things leased without prejudice to his liability for the fulfillment of the contract executed with the lessor.

ART. 1551. A subtenant, without prejudice to his obligation with regard to the sublessor, shall remain bound to the lessor for all the acts which refer to the use and preservation of the thing leased, in the manner agreed upon between the lessor and the lessee.

ART. 1552. The subtenant shall also be bound with regard to the lessor for the amount of the price agreed upon in the sublease, which is due at the time of the summons, considering the payments made in advance as not made, unless he has paid them according to custom.

ART. 1553. The provisions relating to warranty, contained in the title of purchase and sale, are applicable to lease contracts.

In the cases in which the return of the price is proper, a reduction in the price shall be made proportional to the time for which the lessee may have enjoyed the thing.

SECTION SECOND.—*Rights and obligations of the lessor and lessee.*

ART. 1554. The lessor is obliged:

1. To deliver to the lessee the thing which is the object of the contract.

2. To make thereon, during the lease, all the necessary repairs in order to preserve it in condition to serve for the purpose to which it was destined.

3. To maintain the lessee in the peaceful enjoyment of the lease during all the time of the contract.

ART. 1555. The lessee is obliged:

1. To pay the price of the lease in the manner agreed upon.

2. To use the thing leased as a diligent father of a family would, applying the same to the use agreed upon; and, in the absence of an agreement, to the use which may be inferred from the nature of the thing leased according to the custom of the land.

3. To pay the expenses arising from the instrument constituting the contract.

ART. 1556. If the lessor or lessee should not comply with the obligations mentioned in the preceding articles, they may request the rescission of the contract and indemnity for losses and damages, or only the latter, leaving the contract in force.

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ART. 1557. The lessor can not change the form of the thing leased.

ART. 1558. If, during the lease, it be necessary to make any urgent repairs in the thing leased which can not be postponed until the expiration thereof, the lessee shall be obliged to permit the work, even though it be very annoying to him, and even if during such repairs he may be deprived of a part of the estate.

If the repairs should last more than forty days, the price of the lease shall be reduced in proportion to the time and to the part of the estate of which the lessee is deprived.

If the work should be of such nature that the part which the lessee and his family require for a dwelling becomes uninhabitable, he may rescind the contract.

ART. 1559. The lessee is obliged to give notice to the owner with the least possible delay of any usurpation or injurious alterations which any other person may have made or openly is preparing to make to the thing leased.

He is also obliged to give notice with the same urgency to the owner of the necessity of all the repairs included in No. 2 of article 1554.

In either case the lessee shall be liable for the losses and damages which, by reason of his negligence, may be caused to the owner.

ART. 1560. The lessor shall not be obliged to answer for the mere fact of a trespass made by a third person in the use of the estate leased, but the lessee shall have a direct action against the trespasser.

The fact of trespass does not exist if the third person, whether it be the administration or a private person, has acted by virtue of a right belonging to him.

ART. 1561. The lessee must return the estate at the expiration of the lease in the same condition in which he received it, except what may have been destroyed or impaired by time or by unavoidable reasons.

ART. 1562. If, at the time of the lease of the estate, the condition of the same was not mentioned, the law presumes that the lessee received it in good condition, unless there be proof to the contrary.

ART. 1563. The lessee is liable for the deterioration or loss suffered by the thing leased, unless he proves that it took place without his fault.

ART. 1564. A lessee is liable for the impairment caused by the members of his household.

ART. 1565. If the lease has been made for a specified time, it expires on the day previously fixed, without the necessity of any notice.

ART. 1566. If, on the expiration of the contract, the lessee continues enjoying the thing leased for fifteen days with the acquiescence of the lessor, it shall be understood that there is an implied new lease for the time mentioned in articles 1577 and 1581, unless a notice has previously been given.

ART. 1567. In the case of an implied renewal the obligations contracted by a third person for the security of the principal contract shall cease with regard thereto.

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ART. 1568. If the thing leased is lost or any of the contracting parties do not comply with what has been stipulated, the provisions of articles 1182, 1183, 1101, and 1124 shall be respectively observed.

ART. 1569. The lessor may judicially dispossess the lessee for any of the following causes:

1. Upon the expiration of the conventional period or the one fixed for the duration of leases in articles 1577 and 1581.

2. Default in payment of the price agreed upon.

3. Infraction of any of the conditions stipulated in the contract.

4. When the lessee employs the thing leased in uses or services not stipulated and which cause the same to be impaired, or when he does not comply, with regard to its use, with the provisions of No. 2 of article 1555.

ART. 1570. With the exception of the cases mentioned in the preceding article, the lessee shall have the right to make use of the periods fixed in articles 1577 and 1581.

ART. 1571. The purchaser of a leased estate has a right to terminate the lease in force at the time of making the sale, unless the contrary is stipulated, and the provisions of the mortgage law.

If the purchaser should make use of this right, the lessee may demand that he be permitted to gather the fruits of the crop corresponding to the current agricultural year and that he be indemnified by the vendor for the losses and damages he may have suffered.

ART. 1572. A purchaser with an agreement of redemption can not use the right of dispossessing the lessee until the term for the use of the right of redemption has expired.

ART. 1573. A lessee shall have, with regard to the useful and voluntary improvements, the same right which are granted a usufructuary.

ART. 1574. Should there be no stipulation with regard to the place and time of the payment of rent, the provisions of article 1171 shall govern as to place, and the customs of the land as to time.

SECTION THIRD.—*Special provisions for leases of rural property.*

ART. 1575. A lessee shall not have the right to a reduction of the rent on account of the sterility of the land leased or on account of the loss of the fruits through ordinary fortuitous events, but he shall have said right in case of loss of more than half of the fruits through extraordinary and unforeseen fortuitous events unless there is a special agreement to the contrary.

By extraordinary fortuitous events shall be understood fire, war, pestilence, extraordinary inundations, locusts, earthquakes, or any other equally unfrequent events, and which the contracting parties could not have reasonably foreseen.

ART. 1576. Neither shall a lessee have a right to a reduction of the rent, when the fruits have been lost, after having been separated from their roots or trunks.

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ART. 1577. The lease of a rural estate, when its duration is not fixed, shall be understood as executed for the full time required for the gathering of the fruits which the whole estate leased might produce in one year, or all it could produce at one time, even though two or more years may be necessary to obtain them.

That of arable lands, divided into two or more crops, shall be considered as executed for as many years as there are crops.

ART. 1578. The outgoing lessee must permit the incoming one the use of the place and of all other necessary means for the preparatory labor for the following year, and, mutually, the latter is obliged to permit the outgoing one all that may be necessary for the gathering and enjoyment of the fruits, all in accordance with the customs of the place.

ART. 1579. Leases for partnerships of arable lands, breeding cattle, and for industrial or manufacturing establishments shall be governed by the provisions relating to articles of copartnership and by the agreements of the contracting parties, and, in their absence, by the customs of the country.

SECTION FOURTH.—*Special provisions for the lease of town property.*

ART. 1580. In the absence of a special agreement for the repairs of town property, which should be borne by the owner, the customs of the place shall be observed. In case of doubt, they shall be understood as for the account of the owner.

ART. 1581. Should a term not have been fixed for the lease, it is understood for years, when an annual rent has been fixed, for months, when the rent is monthly, and for days, when it is daily.

In every case the lease ceases without the necessity of a special notice upon the expiration of the term.

ART. 1582. If the lessor of a house, or of a part thereof, destined for a dwelling for a family, or of a store or warehouse or industrial establishment, leases the furniture also, the lease of the latter shall be understood as executed for a time equal to that of the house leased.

CHAPTER THIRD.

Hiring of work and services.

SECTION FIRST.—*Services of paid servants and laborers.*

ART. 1583. This class of services may be contracted without a fixed period, for a fixed period, or for a specific work. A hiring for life is void.

ART. 1584. A domestic servant hired for a fixed time and to be employed in the personal service of his master, or of the family of the latter, may leave the service or be dismissed before the expiration of the term; but if the master dismisses the servant without sufficient cause, he shall indemnify him by paying him the wages due and those for fifteen additional days.

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The master shall be believed, unless there is proof to the contrary—

1. With regard to the amount of the wages of the domestic servant.

2. With regard to the payment of the wages earned during the current year.

ART. 1585. Besides what is prescribed in the preceding articles with regard to masters and servants, the provisions of special laws and ordinances shall be observed.

ART. 1586. Field hands, mechanics, artisans, and other laborers hired for a certain time and for a certain work can not leave nor be dismissed, without sufficient cause, before the fulfillment of the contract.

ART. 1587. The dismissal of the servants, mechanics, artisans, and other hired laborers to which the preceding articles refer gives the right to dispossess them of the implements and of the buildings which they may occupy by reason of their duties.

SECTION SECOND.—*Works at a price agreed upon or for a lump sum.*

ART. 1588. The execution of a work may be contracted for by agreeing that the person who is to execute the same shall give his labor or industry only, or that he furnish the materials also.

ART. 1589. If the person who contracted for the work bound himself to furnish the materials, he shall suffer the loss in case of the destruction of the work before it is delivered, unless there has been delay in receiving it.

ART. 1590. A person who has bound himself to give his labor or industry only can not demand any payment if the work is destroyed before it is delivered, unless there should have been delay in receiving the same, or if the destruction should have been due to the bad quality of the materials, provided that he may have given due notice of this circumstance to the owner.

ART. 1591. The contractor of a building which may have been destroyed by reason of defects in the construction shall be liable for the losses and damages if said building should collapse within ten years, to be counted from the completion of the construction; and during the same time the same liability shall be incurred by the architect who may have directed the work if the collapse is due to defects in the ground or in the direction.

If the cause should be the noncompliance of the contractor with the conditions of the contract, the action for indemnity may be brought within fifteen years.

ART. 1592. A person who binds himself to do a work by piece or by measure may demand of the owner that he receive it in installments, and that he pay therefor in proportion. The part paid for shall be presumed as approved and received.

ART. 1593. An architect or contractor who, for a lump sum, takes charge of the construction of a building, or of any other work in view

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of a plan agreed upon with the owner of the ground, can not demand an increase in the price, even if that of the materials or wages has increased, but he may do so when any change increasing the work should be made in the plans, provided the owner has given his authorization.

ART. 1594. The owner may desist, by his own will, from the construction of the work, even when it has been begun, indemnifying the contractor for all the expenses, labor, and profits which he may have obtained from the same.

ART. 1595. When a certain work has been entrusted to a person by reason of his personal qualifications, the contract is rescinded by the death of said person.

In such case, the owner must pay to the heirs of the constructor, in proportion to the price agreed upon, the value of the part of the work executed, and that of the prepared materials, provided he may obtain any benefit from such materials.

The same shall be understood if the person who contracted for the work can not finish it by reason of any cause independent of his will.

ART. 1596. A contractor is responsible for the work done by the persons he employs thereon.

ART. 1597. Those who furnish their labor and materials in a work agreed upon for a lump sum by a contractor have no action against the owner, except for the amount the latter may owe the former when the action is brought.

ART. 1598. When it should be agreed that the work is to be done to the satisfaction of the owner, in the absence of his acceptance the approval is understood as reserved for the proper expert judgment.

If the person who has to approve the work is a third person, his decision shall be final.

ART. 1599. Should there be no agreement or custom to the contrary, the price for the work must be paid upon delivery.

ART. 1600. A person who has executed a work on personal property has the right to retain the same as a pledge until he is paid therefor.

SECTION THIRD.—*Transportation by water and land of persons as well as of things.*

ART. 1601. Carriers of goods by land or by water shall be subject with regard to the keeping and preservation of the things entrusted to them, to the same obligations as determined for innkeepers by articles 1783 and 1784.

The provisions of this article shall be understood without prejudice to what is prescribed by the Code of Commerce with regard to transportation by sea and land.

ART. 1602. Carriers are also liable for the loss of and damage to the things which they receive, unless they prove that the loss or damage arose from a fortuitous event or force majeure.

ART. 1603. The provisions of these articles are understood without prejudice to the provisions of special laws and regulations.

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TITLE VII.

Annuities (censos).[1]

CHAPTER FIRST.

General provisions.

ART. 1604. An annuity (*censo*) is constituted when any real property is subjected to the payment of a pension or annual income in compensation for a capital which is received in cash, or for the full or partial ownership of the property which is conveyed.

ART. 1605. An annuity is called emphyteutic (*censo enfitéutico*) when a person transfers to another the beneficial ownership of an estate reserving to himself the legal ownership and a right to receive from the emphyteuticary an annual income in recognition of such ownership.

ART. 1606. An annuity is transferable or consignative (*censo consignativo*) when the owner of land imposes upon an estate belonging to him the charge of an income or pension which he binds himself to pay to the lender for a sum in cash which he has received from the latter.

ART. 1607. An annuity is reservative or set apart (*censo reservativo*) when a person transfers to another the full ownership of an estate, reserving to himself the right to receive from said estate an annual pension which is to be paid by the owner of the land.

ART. 1608. The nature of the annuity requires that the transfer of the principal or of the estate should be perpetual or for an unlimited time; however, the person paying the annuity may redeem it at his will, even though the contrary should be stipulated, this provision being applicable to annuities actually existing.

It may, however, be stipulated that the redemption of the annuity can not be made during the life of the annuitant or of a specified person, or that it may not be redeemed within a certain number of years, which can not exceed twenty in consignative annuities, nor sixty years in reservative and in emphyteutic annuities.

ART. 1609. In order to carry out the redemption, the person paying the annuity must give notice thereof one year in advance to the annuitant or must pay to him, in advance, the amount of one year's income.

ART. 1610. Annuities can not be partially redeemed except by virtue of an express agreement.

Neither can they be redeemed against the will of the annuitant unless the payment of all the income due has been made.

ART. 1611. For the redemption of annuities constituted before the promulgation of this code, should the principal be unknown, it shall be regulated by the principal which may result by computing the income at 3 per cent.

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[1] *Censo.*—Not techanically a rent charge, but an annuity charged directly on real estate, and also involving personal liability. (See article 1623.)

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If the income is paid in fruits, for the determination of the capital, they shall be appraised at the average price they may have had during the last five years.

The provisions of this title shall not apply to special emphyteusis (*foros* and *sub foros*), surface rights, and any other similar encumbrances in which the principles of redemption of ownership shall be governed by a special law.

ART. 1612. The expenses arising from the redemption and liberation from annuities shall be borne by the person paying the same except those arising from unjustifiable opposition, in the judgment of the courts.

ART. 1613. The income or pension of annuities shall be determined by the parties upon the execution of the contract.

It may consist of money or fruits.

ART. 1614. The pensions shall be paid at the periods agreed upon, and, in the absence of an agreement, if they consist of money, by the years elapsed, counted from the date of the contract; and if of fruits, at the end of the respective crops.

ART. 1615. If the place at which the income is to be paid should not have been designated in the contract, this obligation shall be complied with at the place in which the estate which is charged with the annuity is located, provided the annuitant or his attorney have their domicile in the municipal district of the same town. Should this not be the case, but should the person paying the annuity reside there, the payment shall be made at the domicile of the latter.

ART. 1616. The annuitant, at the time of the delivery of the receipt of any income, can oblige the person paying the annuity to give him a memorandum in which it may appear that the payment has been made.

ART. 1617. Estates charged with annuities may be conveyed for a valuable or good consideration, as may also be the right to receive the income.

ART. 1618. Estates charged with annuities can not be divided among two or more persons without the express consent of the annuitant, even when acquired by inheritance.

If the annuitant should permit the division, the part of the annuity with which each portion remains charged shall be designated with his consent, as many different annuities being constituted as there are portions in which the estate is divided.

ART. 1619. If the estate charged with an annuity is to be awarded to several heirs, and the annuitant does not give his consent to the division, it shall be placed at auction among said heirs.

In the absence of agreement or if none of the parties in interest should offer the price of the appraisement, the estate shall be sold with the charge, the proceeds being distributed among the heirs.

ART. 1620. The principal as well as the income of annuities prescribes in accordance with the provisions of title 18 of this book.

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ART. 1621. Notwithstanding the provisions of article 1110, the payment of two consecutive incomes shall be necessary to presume that all the preceding ones have been paid.

ART. 1622. The person paying the annuity is obliged to pay the taxes and other charges affecting the estate charged with the annuity.

When the person paying the annuity pays the income he may deduct therefrom the part of the charges to be paid by the annuitant.

ART. 1623. Annuities give rise to a real action against the estate charged. Besides the real action, the annuitant may bring a personal action for the payment of the income in arrears and for damages and interest when proper.

ART. 1624. The person paying the annuity can not ask for the remission or reduction of the income on account of an accidental sterility of the estate nor on account of the loss of its fruits.

ART. 1625. When an estate charged with an annuity is totally destroyed or rendered useless by force majeure or by a fortuitous event, the annuity shall be extinguished, the payment of the pension discontinuing.

If it is destroyed in part only, the person paying the annuity shall not be exempt from the payment of the pension, unless he prefers to abandon the estate to the annuitant.

When there is fault on the part of the person paying the annuity, he shall be bound, in either case, to indemnify for losses and damages.

ART. 1626. In the case of the first paragraph of the preceding article, if the estate should be insured, the amount of the insurance shall be liable for the payment of the principal of the annuity and of the incomes due, unless the person paying the annuity should prefer to invest it in rebuilding the estate, in which case the annuity shall revive with all its effects, including the payment of the unpaid income. The annuitant may demand of the person paying the annuity that he secure the investment of the amount of the insurance in the rebuilding of the estate.

ART. 1627. If the estate charged with an annuity is taken by eminent domain, its price shall remain liable for the payment of the principal of the annuity and of the pensions due, said annuity being extinguished.

The foregoing provisions are also applicable in the case in which the taking by eminent domain is of a part of the estate only, should its price be sufficient to cover the principal of the annuity.

Should it not be sufficient, the annuity shall continue to be charged on the remainder of the estate, provided its price be sufficient to cover the principal of the annuity and 25 per cent in addition. In any other case the person paying the annuity shall be bound either to substitute the part taken with another security or to redeem the annuity, at his option, without prejudice to the provisions of article 1631, with regard to emphyteutic annuities.

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CHAPTER SECOND.

Emphyteutic annuities.

SECTION FIRST.—*Provisions referring to emphyteusis.*

ART. 1628. An emphyteutic annuity can only be charged on real property and in a public instrument.

ART. 1629. At the time of the constitution of the emphyteutic annuity the value of the estate and the annual income to be paid shall be fixed in the contract, under the penalty of nullity.

ART. 1630. If the pension should consist of a fixed amount of fruits, the kind and quality thereof shall be determined in the contract.

Should it consist of an aliquot part of those the estate may produce, in the absence of an express stipulation as to the intervention which the legal owner may exercise, the emphyteuticary shall give to said owner or his representative previous notice of the day on which he intends to commence the gathering of each kind of fruit, in order that he may, either personally or through his representative, inspect all the operations until he receives the share belonging to him.

After the notice has been given, the emphyteuticary may gather the crops, even when neither the legal owner nor his representative or agent is present.

ART. 1631. In case of the exercise of eminent domain, the provisions of the first paragraph of article 1627 shall be observed if the entire estate should be thus taken.

Should it be thus taken only in part, the price of what has been taken shall be divided between the legal and beneficial owner, the former receiving the part of the principal of the annuity, which proportionally belongs to the part taken, according to the value given to the entire estate when the annuity was constituted, or which served as a basis for the redemption, and the remainder shall belong to the emphyteuticary.

In this case the annuity shall continue on the rest of the estate, with the proper reduction of the principal and the pensions, unless the emphyteuticary chooses between the total redemption or the abandonment in favor of the legal owner.

If, in accordance with what has been agreed upon, laudemio is to be paid, the legal owner shall receive that, which for this reason pertains to him, only from the part of the price belonging to the emphyteuticary.

ART. 1632. The products of the estate and of its accessions belong to the emphyteuticary.

He has the same rights which the owner would have in the treasure and mines which may be discovered on the estate charged with the emphyteusis.

ART. 1633. The emphyteuticary may dispose of the emphyteutic estate and of its accessions by acts *inter vivos* as well as by last will, reserving the rights of the legal owner, and subject to the provisions of the following articles.

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ART. 1634. If the pension should consist of an aliquot part of the fruits of the emphyteutic estate, neither an easement nor any other charge which may diminish the proceeds of the same shall be imposed upon it without the express consent of the legal owner.

ART. 1635. The emphyteuticary may freely bestow as a gift or exchange the estate, giving notice thereof to the legal owner.

ART. 1636. The legal and beneficial owners have the mutual right of preemption and of redemption, provided they sell or give in payment their respective ownership of the emphyteutic estate.

This provision is not applicable to obligatory alienations, for reasons of public utility.

ART. 1637. For the purposes of the preceding article, a person desiring to alienate the ownership of an estate held in emphyteusis must give notice thereof to the other coowner, stating the final price which may be offered to him, or the one for which he desires to alienate his ownership.

Within the twenty days following the notice, the coowner may make use of the right of preemption by paying the price indicated. Should he not do so, he shall lose said right and the alienation may take place.

ART. 1638. If the legal owner or the emphyteuticary, in a proper case, should not have made use of the right of preemption to which the preceding article refers, he may make use of that of redemption to acquire the estate for the price at which it has been sold.

In such case the redemption must be made use of within the nine working days following that of the execution of the bill of sale. If said sale should be concealed, said period shall be counted from the record thereof in the registry of property.

Concealment is presumed when the instrument is not filed in the registry within the nine days following that of its execution.

Besides this presumption, the concealment may be proven by any other legal means.

ART. 1639. If the alienation has taken place without the previous notice prescribed in article 1637, the legal owner, and, in a proper case, the beneficial owner may exercise the action of redemption at any time, until one year has elapsed, to be counted from the day the alienation is entered in the registry of property.

ART. 1640. In judicial sales of emphyteutic estates, the legal owner and the beneficial one, in their respective cases, may make use of the right of preemption within the period fixed in the notices of the sale at auction, paying the price which may serve as a basis for the auction and that of the redemption within the nine working days following that of the execution of the instrument.

In such case, the previous notice required by article 1637 shall not be necessary.

ART. 1641. If there are several estates alienated, charged with the same annuity, the right of preemption or that of redemption can not be exercised with regard to some of them and to the exclusion of others.

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ART. 1642. When the legal or beneficial ownership is vested in several persons *pro indiviso*, each one of them may make use of the right of redemption subject to the rules established for that of owners in common, preference being given to the legal owner if a part of the beneficial ownership should have been alienated, or to the emphyteuticary if the alienation should have been of the legal ownership.

ART. 1643. If the emphyteuticary should be disturbed in his right by a third party who disputes the legal ownership or the validity of the emphyteusis, he can not claim the corresponding indemnity from the legal owner if he does not summon him for the eviction, in accordance with the provisions of article 1481.

ART. 1644. In alienations for a valuable consideration of emphyteutic estates, laudemio shall be paid to the legal owner only when it has been expressly stipulated in the contract of emphyteusis.

If, when it has been stipulated, a fixed sum has not been specified, it shall consist of 2 per cent of the price of the alienation.

In emphyteusis prior to the promulgation of this code, which may be subject to the payment of laudemio, even though it should not have been stipulated, this prestation shall continue in the usual manner, but it shall not exceed 2 per cent of the price of the alienation, unless a higher one has been expressly agreed upon.

ART. 1645. The obligation to pay laudemio pertains to the person acquiring the estate, unless there is a stipulation to the contrary.

ART. 1646. If the emphyteuticary should have obtained permission from the legal owner for the alienation, or should have given him the previous notice prescribed in Article 1637, the legal owner can not demand the payment of laudemio except within a year following the day on which the public instrument is entered in the registry of property. With the exception of these cases this action shall be subject to ordinary prescription.

ART. 1647. The legal owner may every twenty-nine years demand the acknowledgment of his right by the person who is in possession of the emphyteutic estate.

The expenses of the acknowledgment shall be borne by the emphyteuticary, but no other prestation whatever, for this reason, shall be required of him.

ART. 1648. The estate shall be forfeited and the legal owner may demand its restitution:

1. By nonpayment of the pension for three consecutive years.
2. If the emphyteuticary does not comply with the conditions stipulated in the contract or seriously impairs the estate.

ART. 1649. In order that the legal owner may demand the forfeiture in the first case of the preceding article, he must demand payment of the emphyteuticary, either judicially or through a notary, and should the latter not pay within the thirty days following the demand the right of the owner may be freely exercised.

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ART. 1650. The emphyteuticary may free himself from the forfeiture, in every case, by redeeming the annuity and paying the pensions due within the thirty days following the formal demand for the payment or the summons for the suit.

The creditors of the emphyteuticary may make use of the same right within thirty days following that on which the legal owner may have recovered the full ownership.

ART. 1651. The redemption of the emphyteusis shall consist in a payment of cash in full to the legal owner for the principal which may have been fixed as the value of the estate at the time of the constitution of the annuity, and no other prestation can be exacted, unless it should have been stipulated.

ART. 1652. In case of forfeiture, or in that of rescission of the contract of emphyteusis for any reason whatsoever, the legal owner must pay for the improvements which may have increased the value of the estate, provided such increase exists at the time of the restitution.

If the estate has deteriorated, through fault or negligence on the part of the emphyteuticary, the deterioration shall be set off against the improvements, and, in so far as they do not suffice, the emphyteuticary shall remain personally bound to pay for them, as well as for the pensions due and not prescribed.

ART. 1653. In the absence of testamentary heirs, descendants, ascendants, a surviving spouse, and relatives within the sixth degree of the last emphyteuticary, the estate shall revert to the legal owner in the condition in which it may exist, unless the emphyteuticary has not disposed of it in another manner.

ART. 1654. The contract of subemphyteusis shall not be valid in the future.

SECTION SECOND.—*Special annuities (foros), and other contracts analogous to that of emphyteusis.*

ART. 1655. Special annuities (*foros*), and any other charges of a similar character which may be established after the promulgation of this code, should they be for an unlimited time, shall be governed by the provisions established for emphyteusis in the preceding section.

Should they be temporary or for a limited period, they shall be considered as leases and shall be governed by the provisions relating to such contracts.

ART. 1656. The contract by virtue of which the owner of land grants its use for the planting of vines, during the time that the first rootstocks may live, the grantee paying him an annual pension or rent in fruits or in money, shall be governed by the following rules:

1. It shall be considered extinguished fifty years after the concession, when no other time has been expressly fixed therein.

2. It shall also be extinguished by the death of the first rootstocks, or when two-thirds of those planted have become barren.

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3. The grantee or farmer may plant sprigs or shoots from new vines during the time of the contract.

4. This contract does not lose its character by the power of making other plantations on the land granted, provided its main object should be the plantation of vines.

5. The grantee may freely transmit his right for a valuable or good consideration, but the use of the estate can not be divided unless the owner expressly consents thereto.

6. In alienations for a valuable consideration the grantor and grantee shall reciprocally have the rights of preemption and redemption, in accordance with the provisions for emphyteusis, and with the obligation of giving the previous notice prescribed in article 1637.

7. The farmer or grantee may relinquish or return the estate to the grantor when convenient, upon paying for the impairments caused by his fault.

8. The grantee shall have no right to the improvements existing on the estate at the time of the expiration of the contract, provided they are necessary or have been made in fulfillment of what has been agreed upon.

With regard to useful and voluntary improvements, he shall not be entitled to be paid for the same, unless he made them with the written consent of the owner of the land, who bound himself to pay for them. In such case said improvements shall be paid for according to the value they may have when the estate is returned.

9. A grantor may make use of the action of dispossession upon the expiration of the term of the contract.

10. If, after the expiration of the term of fifty years or the one expressly fixed by the persons interested, the grantee should continue in the use and enjoyment of the estate by the implied consent of the grantor, the former can not be dispossessed without previous notice, which the latter shall have to give him a year in advance to terminate the contract.

CHAPTER THIRD.

Transferable annuities (censos consignativos.)

ART. 1657. When the payment of the pension of the transferable annuity is stipulated in fruits, the species, quantity, and quality of the same must be fixed, and can not consist of an aliquot part of those which the estate charged with the annuity may produce.

ART. 1658. The redemption of a transferable annuity shall consist in the return to the annuitant in cash and in full of the principal paid for the constitution of the annuity.

ART. 1659. When a real action is proper against an estate, charged with an annuity, for the payment of pensions, if what remains of the value of the same is not sufficient to cover the principal of the annuity and 25 per cent in addition, the annuitant may oblige the person paying

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the annuity, at the latter's option, to redeem the annuity or to complete the guarantee or to abandon the remainder of the estate in favor of the former.

ART. 1660. The annuitant may also make use of the right mentioned in the preceding article in the other cases in which the value of the estate should be insufficient to cover the principal of the annuity, and 25 per cent in addition if any of the following circumstances exist:

1. If the value of the estate should have decreased by the fault or negligence of the person paying the annuity.

In such case the latter shall also be liable for losses and damages.

2. When the person paying the annuity has failed to pay the pensions for two consecutive years.

3. When the person paying the annuity may have been declared a bankrupt or insolvent.

CHAPTER FOURTH.

Reservative annuities.

ART. 1661. Reservative annuities can not be validly constituted unless preceded by an appraisement of the estate by an estimate agreed to by the parties or upon a just expert appraisal.

ART. 1662. The redemption of this annuity shall take place by the person who pays it, delivering to the annuitant in cash and in full the principal which may have been fixed in accordance with the preceding article.

ART. 1663. The provisions of article 1657 are applicable to reservative annuities.

ART. 1664. In the cases prescribed in articles 1659 and 1660, the debtor of the reservative annuity can only be obliged to redeem the annuity or to abandon the estate in favor of the annuitant.

TITLE VIII.

Partnership.

CHAPTER FIRST.

General provisions.

ART. 1665. Partnership is a contract by which two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.

ART. 1666. Partnerships must have licit objects, and must be established for the common interests of the partners.

When the dissolution of an illicit partnership is declared, the profits shall be devoted to the charitable institutions of the domicile of the partnership, and, in their absence, to those of the province.

ART. 1667. Civil partnerships may be established in any form whatever, unless when real property or property rights should be contributed to the same, in which case a public instrument shall be necessary.

ART. 1668. Articles of copartnership are void, if real property is contributed to the same, if an inventory of said property is not made, signed by the parties, and which must be attached to the instrument.

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ART. 1669. Partnerships, the articles of which are kept secret among the partners, and in which each one of the latter may contract in his own name with third persons, shall have no judicial personality.

This kind of partnership shall be governed by the provisions relating to property held in common.

ART. 1670. Civil partnerships, on account of the objects to which they are devoted, may adopt all the forms accepted by the Code of Commerce. In such case its provisions shall be applicable in so far as they do not conflict with those of this code.

ART. 1671. Partnerships are general or particular.

ART. 1672. General partnerships may consist of all the present property or of all the profits.

ART. 1673. Partnerships which include all the present property are those in which the parties contribute all the property which actually belongs to them to a common fund, with the intention of dividing the same among themselves, as well as all the profits they may acquire therefrom.

ART. 1674. In general partnerships of all present property, what belongs to each of the partners becomes the common property of all the partners, as well as all the profits which they may acquire therewith.

An agreement for the division of any other profits may also be made, but the property which the partners acquire subsequently by inheritance, legacy, or gifts shall not be included in the same, but the fruits of said property may be.

ART. 1675. General partnerships of profits include all that the partners may acquire by their industry or work during the continuation of the partnership.

Personal or real property which each of the partners may possess at the time of the celebration of the agreement shall continue to be their private property, the usufruct only passing to the partnership.

ART. 1676. Articles of general copartnership executed without specifying its nature only constitutes a general partnership of profits.

ART. 1677. Persons who are forbidden to mutually grant each other gifts or advantages can not contract a general partnership.

ART. 1678. A particular partnership has for its object specified things only, their use or profits, or a specified undertaking, or the exercise of a profession or art.

CHAPTER SECOND.

Obligations of partners.

SECTION FIRST.—*Obligations of the partners among themselves.*

ART. 1679. A partnership begins from the moment of the making of the agreement, if not otherwise stipulated.

ART. 1680. A partnership continues during the time agreed upon; in the absence of an agreement, for such time as the business which has been the exclusive object of the partnership may last, if by its nature it

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has a limited duration; and in any other case during the lives of the partners, without prejudice to the rights reserved to them by article 1700 and to the provisions of article 1704.

ART. 1681. Every partner is a debtor of the partnership for whatever he has promised to contribute thereto.

He is also bound to eviction with regard to the specified and determined things he may have contributed to the partnership in the same cases and in the same manner as a vendor is bound with regard to the vendee.

ART. 1682. A partner who has bound himself to contribute a sum of money and fails to do so is at law a debtor for the interest thereon, from the day on which he should have contributed the same, without prejudice to indemnifying furthermore for the damages he may have caused thereby.

The same shall take place with regard to amounts he may have taken from the common funds, and interest shall be earned from the day on which he took them for his private use.

ART. 1683. A partner who gives his services but contributes no capital owes to the partnership the profits which, during its existence, he may have earned in a branch of the industry which is the object of the partnership.

ART. 1684. If a partner who is authorized to manage collects a demandable sum, which was owed to him in his own name, from a person who owed the partnership another sum, also demandable, the sum collected shall be charged to the two credits in proportion to their amounts, even when he may have given a receipt for his own account only; but should he have given it on account of the common funds, it shall all be charged to the credit of the latter.

The provisions of this article are understood without prejudice to the debtor using the privilege granted to him in article 1172, but only in the case the personal credit of the partner is more burdensome to him.

ART. 1685. A partner who has received in full his share of a partnership credit, when the other partners had not collected theirs, is obliged, if the debtor afterwards becomes insolvent, to contribute to the partnership capital what he received, even though he may have given the receipt for his share only.

ART. 1686. Every partner shall be liable to the partnership for the losses and damages suffered by it through his fault, and he can not compensate them with the benefits which he may have given to the partnership by his services.

ART. 1687. The risk of things, certain and specified, which are not perishable, contributed to the partnership in order that only their use and fruits be common, shall be borne by the partner owning them.

If the things contributed are perishable, or if they can not be kept without deteriorating, or if they were contributed to be sold, the risk shall be borne by the partnership. It shall also be borne by the same

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in the absence of a special agreement with regard to the things contributed and appraised in the inventory, and, in such case, the claim shall be limited to the value at which they were appraised.

ART. 1688. The partnership is liable to every partner for the amounts he may have disbursed on account of the same and for the proper interest; it shall also be liable to every partner for the obligations he may have contracted in good faith by reason of the partnership business, and for risks inseparable from its management.

ART. 1689. The losses and profits shall be distributed in accordance with what has been agreed upon. If an agreement exists only with regard to the share of each one in the profits, his share in the losses shall be in the same proportion.

In the absence of an agreement, the share of each partner in the profits and losses shall be in proportion to what he may have contributed. The partner who contributes his services only shall receive a share equal to the one who has contributed the least. If besides his services he should have contributed capital, he shall also receive the proportional share which may pertain to him for this capital.

ART. 1690. If the partners have agreed to intrust to a third person the designation of the share of each one in the profits and losses, said designation can be impugned only if it has evidently been made contrary to equity. In no case shall the partner, who has commenced to execute the decision of the third person or who has not impugned the same within a period of three months, counted from the time he had knowledge thereof, object thereto.

The designation of the losses and profits can not be intrusted to one of the partners.

ART. 1691. An agreement in which one or more of the partners are excluded from any share in the profits or losses is void.

Only the partner contributing his services but no capital may be exempted from any liability in the losses.

ART. 1692. The partner who has been appointed manager in the articles of copartnership may execute all administrative acts, notwithstanding the opposition of his partners, unless he should act in bad faith; and his power is irrevocable without legitimate cause.

A power executed after the agreement, without there having been stipulated therein that it should be conferred, may be revoked at any time.

ART. 1693. If two or more partners have been intrusted with the management of the partnership without their duties having been fixed, or without a statement having been made that one of them shall not act without the consent of the others, each one may severally exercise all acts of administration; but any of them may oppose the acts of the others before they have produced any legal effect.

ART. 1694. In case it should have been agreed that some of the managing partners are not to act without the consent of the others, the consent of all shall be necessary for the validity of the acts; and the

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absence or incapacity of any one of them can not be alleged unless there should be imminent danger of a serious or irreparable injury to the partnership.

ART. 1695. Should no agreement have been made with regard to the form of management, the following rules shall be observed:

1. All the partners shall be considered agents, and whatever anyone of them may do by himself shall bind the partnership; but each one may oppose the act of the others before they may have produced any legal effect.

2. Every partner may make use of the things which make up the partnership capital, according to the customs of the country, provided he does not do so against the interest of the partnership or in such manner as to prevent the use thereof to which his copartners are entitled.

3. Every partner may force the others to defray together with him the expenses necessary for the preservation of the things owned in common.

4. None of the partners can, without the consent of the others, make any alteration in the partnership real property, even should he allege that it is useful to the partnership.

ART. 1696. Every partner may associate another person in his share, but said person shall not enter the partnership without the unanimous consent of the other partners, even when the former is the manager.

SECTION SECOND.—*Obligations of partners with regard to third persons.*

ART. 1697. In order that the partnership may be liable to a third person for the acts of one of the partners, it is necessary:

1. That the partner should have acted as such for the account of the partnership.

2. That he should have the power to bind the partnership by virtue of an express or implied authority.

3. That he may have acted within the limits of his power or authority.

ART. 1698. Partners are not jointly bound with regard to the debts of the partnership, and none of them can bind the others by a personal act, if they have not granted him a power therefor.

The partnership is not liable with regard to third persons for an act which one partner may have performed in his own name or without a power from the partnership therefor; but it is liable to the partner in so far as said acts have benefited said partnership.

The provisions of this article shall be understood without prejudice to the provisions of rule first of Art. 1695.

ART. 1699. The creditors of the partnership shall be preferred to the creditors of each partner with regard to the partnership property. Without prejudice to this right, the private creditors of each partner may demand the attachment and sale at auction of the latter's share in the partnership capital.

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CHAPTER THIRD.

Manners of dissolving partnership.

ARTICLE 1700. Partnership is dissolved:

1. When the term for which it was constituted expires.

2. When the thing is lost, or the business for which it was constituted ends.

3. By the natural death, civil interdiction, or insolvency of any of the partners, and in the case prescribed in article 1699.

4. By the will of any of the partners, subject to the provisions of articles 1705 and 1707.

The partnerships referred to in article 1670 are excepted from the provisions of numbers 3 and 4 of this article, in the cases in which they should exist, according to the code of commerce.

ART. 1701. If a specific thing, which a partner had promised to contribute to the partnership, perishes before the delivery has been effected, its loss produces the dissolution of the partnership.

A partnership shall also be dissolved, in any case, by the loss of the thing, when the partner who contributes it reserves to himself the ownership thereof and transfers to the partnership the use or enjoyment of the same only.

But the partnership shall not be dissolved by the loss of the thing when this loss occurs after the ownership thereof has been acquired by the partnership.

ART. 1702. A partnership established for a specified time may be extended by the consent of all the partners.

The consent may be express or implied and it may be proven by the ordinary means.

ART. 1703. If the partnership is extended after the expiration of its term, it is understood that a new partnership is established. If it is extended before the expiration of the term, the original partnership continues.

ART. 1704. A stipulation is valid which provides that on the death of one of the partners the partnership shall continue among the survivors. In such case the heir of the deceased shall only be entitled to have a division made, fixing it on the day of the death of his constituent; and he shall participate in the subsequent rights and obligations only in so far as they are a necessary consequence of what has been done before said day.

If the stipulation should be that the partnership shall continue with the heir, it shall be enforced without prejudice to the provisions of No. 4 of article 1700.

ART. 1705. The dissolution of the partnership by the will or withdrawal of one of the partners shall only take place when a term for its duration has not been fixed, or if this term does not appear from the nature of the business.

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In order that the withdrawal may be of effect, it must be made in good faith at the proper time; notice thereof shall also be given to the other partners.

ART. 1706. A withdrawal is in bad faith when the person who makes it proposes to appropriate to himself alone the benefits which should be common. In such case the person who renounces it does not free himself from liability to his partners, and they shall have the power to exclude him from the partnership.

A withdrawal shall be presumed as not made at the proper time when, the things not being integral, the partnership is interested in delaying its dissolution. In such case the partnership shall continue until the conclusion of the pending transactions.

ART. 1707. No partner can demand the dissolution of a partnership which, either by a provision of the articles or by the nature of the business, has been constituted for a specified time unless there should exist sufficient reason, such as when one of the partners fails to comply with his obligations, or when he becomes incapacitated for the partnership business, or any other similar cause, in the judgment of the courts.

ART. 1708. The distribution among the partners shall be governed by the rules for inheritances, with regard to its form as well as to the obligations arising therefrom. The partner contributing his services only shall not be given any part of the property contributed, but only its fruits and profits, in accordance with the provisions of article 1689, unless the contrary has been expressly stipulated.

TITLE IX.

Agency.

CHAPTER FIRST.

CHARACTER, FORM, AND KINDS OF AGENCY.

ART. 1709. By the contract of agency, a person binds himself to render some service, or to do something for the account or at the request of another.

ART. 1710. An agency may be express or implied.

An express agency may be given by a public or private instrument and even by parol.

The acceptance may also be express or implied, the latter being inferred from the acts of the agent.

ART. 1711. In the absence of an agreement to the contrary, the agency is presumed to be gratuitous.

Nevertheless, if the agent has for an occupation the performance of services of the kind to which the agency refers, the obligation of compensating him is presumed.

ART. 1712. Agency is general or special.

The former includes all the business of the principal.

The latter, one or more specific transactions.

ART. 1713. An agency stated in general terms only includes acts of administration.

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In order to compromise, alienate, mortgage, or to execute any other act of strict ownership an express commission is required.

The power to compromise does not give authority to place the matter in the hands of arbitrators or amicable compromisers.

ART. 1714. An agent can not exceed the scope of his authority.

ART. 1715. The scope of the authority shall not be considered as exceeded if it should be fulfilled in a manner more advantageous for the principal than that specified by him.

ART. 1716. An emancipated minor can be an agent; but the principal shall only have an action against him in accordance with the provisions regarding the obligations of minors.

A married woman may only accept an agency by permission of her husband.

ART. 1717. When an agent acts in his own name, the principal shall have no action against the persons with whom the agent has contracted, nor the said persons against the principal.

In such case, the agent is directly liable to the person with whom he has contracted, as if the transaction were his own. The case involving things belonging to the principal is excepted.

The provision of this article shall be understood without prejudice to actions between principal and agent.

CHAPTER SECOND.

Obligations of the agent.

ART. 1718. An agent by his acceptance remains bound to fulfill the agency and shall be liable for the losses and damages caused to the principal through his noncompliance.

He must also finish business already begun on the death of the principal, when there is any danger in delay.

ART. 1719. In complying with the agency, the agent shall follow the instructions of the principal.

In their absence, he shall do all that which, according to the character of the business, would be done by a good father of a family.

ART. 1720. Every agent is bound to give an account of his transactions and to pay to the principal all that he may have received by virtue of the agency, even though what has been received is not owed to the principal.

ART. 1721. An agent may appoint a substitute when the principal has not forbidden him to do so; but he shall be liable for the acts of the substitute—

1. When the power to appoint such substitute was not granted him.
2. When such power was granted him, but without designating the person, and the person appointed is well known to be incapacitated or insolvent.

What is done by the substitute, appointed against the prohibition of the principal, shall be void.

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ART. 1722. In the cases included in the two numbers of the preceding article, the principal may furthermore bring an action against the substitute.

ART. 1723. The liability of two or more agents, even though they should have been simultaneously appointed, is not joint unless it has been so stated.

ART. 1724. An agent shall owe interest for the sums he has applied to his own use, from the day on which he did so, and for those which he still owes, after the expiration of the agency, and from the time of his default.

ART. 1725. An agent who acts as such is not personally liable to the person with whom he contracted, unless he expressly binds himself therefor, or when he exceeds the scope of the authority without giving him sufficient notice of his powers.

ART. 1726. An agent is liable not only for fraud, but also for negligence, which must be judged with more or less severity by the courts, according as to whether the agency may have been gratuitous or otherwise.

CHAPTER THIRD.

Obligations of the principal.

ART. 1727. A principal must fulfill all the obligations which the agent may have contracted, within the scope of his authority.

A principal is liable, in so far as the agent has exceeded his power, only when he ratifies the same, expressly or in an implied manner.

ART. 1728. A principal must advance to the agent, if the latter should request it, the amounts necessary for the execution of the agency.

Should the agent have advanced them, the principal must reimburse him for the same, even if the transaction should not have succeeded, provided the agent should have been exempted from blame.

The reimbursement shall include interest on the amounts advanced, counted from the day on which the advance was made.

ART. 1729. The principal must also indemnify the agent for all losses and damages he may incur in complying with the agency, without fault nor imprudence on the part of said agent.

ART. 1730. The agent may retain the things which are the objects of the agency in pledge until the principal pays the indemnity and reimbursement referred to in the two preceding articles.

ART. 1731. If two or more persons have appointed an agent for a common transaction, they shall be jointly liable to the latter for all the effects of the agency.

CHAPTER FOURTH.

Manner of terminating the agency.

ART. 1732. Agency is terminated—

1. By revocation.
2. By withdrawal of the agent.
3. By death, interdiction, bankruptcy, or insolvency of the principal or of the agent.

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ART. 1733. The principal may, at his will, revoke the power and compel the agent to return the instrument containing the same in which the authority was given.

ART. 1734. If the agency should have been granted to contract with determined persons, its revocation can not prejudice them unless they were given notice.

ART. 1735. The appointment of a new agent for the same business produces a revocation of the previous agency from the day on which notice was given to the former agent, excepting the provisions of the preceding article.

ART. 1736. An agent may withdraw from the agency by giving notice to the principal. Should the latter suffer any losses through the withdrawal, the agent must indemnify him therefor, unless said agent bases his withdrawal upon the impossibility of continuing to act as such without serious detriment to himself.

ART. 1737. Even should the agent renounce the agency for sufficient cause, he must continue as such until the principal should have been able to take the necessary steps to provide therefor.

ART. 1738. What has been done by the agent, when he was not aware of the death of the principal, or of any other of the causes which terminate the agency, shall be valid and of effect with regard to third persons who may have contracted with the agent in good faith.

ART. 1739. In case the agent dies, his heirs must inform the principal thereof, and meanwhile adopt the measures which circumstances may require for the interest of the latter.

TITLE X.

Loans.

GENERAL PROVISION.

ART. 1740. By the contract of loan, one of the parties delivers to the other, either anything not perishable, in order that the latter may use it during a certain period and return it to the former, in which case it is called commodatum, or money or any other perishable thing, under the condition to return an equal amount of the same kind and quality, in which case it is merely called a loan.

Commodatum is essentially gratuitous.

A simple loan may be gratuitous, or made under a stipulation to pay interest.

CHAPTER FIRST.

Commodatum.

SECTION FIRST.—*Nature of commodatum.*

ART. 1741. The bailor retains the ownership of the thing loaned. The bailee acquires the use thereof, but not its fruits; if any compensation is involved, to be paid by the person requiring the use, the agreement ceases to be a commodatum.

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ART. 1742. The obligations and rights which arise from the commodatum pass to the heirs of both contracting parties, unless the loan has been made in consideration for the person of the bailee, in which case his heirs shall not have the right to continue using the thing loaned.

SECTION SECOND.—*Obligations of the bailee.*

ART. 1743. The bailee is obliged to pay the ordinary expenses which are necessary for the use and preservation of the thing loaned.

ART. 1744. If the bailee puts the thing to a different use than that for which it was loaned, or keeps it in his possession for a longer time than that agreed upon, he shall be liable for its loss, even when said loss occurs by reason of a fortuitous event.

ART. 1745. If the thing loaned was delivered under appraisal and is lost, even it be by reason of a fortuitous event, the bailee shall be liable for its value, unless there is an agreement in which he is expressly exempted from liability.

ART. 1746. The bailee is not liable for the wear and tear suffered by the thing loaned by reason of its use only, and without his fault.

ART. 1747. A bailee can not retain the thing loaned under the pretext that the bailor owes him something, even should it be by reason of expenses.

ART. 1748. All the bailees to whom the thing is jointly loaned shall be jointly liable for the same, in accordance with the provisions of this section.

SECTION THIRD.—*Obligations of the bailor.*

ART. 1749. A bailor can not demand the thing loaned, except after the termination of the use for which he loaned it. Nevertheless, if before this period the bailor has an urgent necessity for the same, he may demand its restitution.

ART. 1750. If the duration of the commodatum should not have been stipulated nor the use to which the thing loaned was to be devoted, and the latter should not be determined by the customs of the land, the bailor may demand it at his will.

In case of doubt the burden of proof falls upon the bailee.

ART. 1751. The bailor must pay the extraordinary expenses arising during the contract for the preservation of the thing loaned, provided that the bailee informs him thereof before making them, unless they should be so urgent that the answer to the notice cannot be waited for without risk.

ART. 1752. The bailor who, knowing the vices of the thing loaned, should not have informed the bailee thereof, shall be liable to him for the damages he may have suffered by reason thereof.

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CHAPTER SECOND.

Simple loan.

ART. 1753. A person receiving money or any other perishable thing on loan acquires its ownership, and is bound to return to the creditor an equal amount of the same kind and quality.

ART. 1754. The obligation of a person taking money on loan shall be governed by the provisions of article 1170 of this Code.

If what has been loaned is another perishable thing, or a quantity of metal, not coined, the debtor owes a quantity equal to that received, and of the same kind and quality, even though it may have suffered a change in its value.

ART. 1755. Interest shall only be owed when it has been expressly stipulated.

ART. 1756. A borrower who has paid interest without it being stipulated can not claim it nor charge it to the capital.

ART. 1757. Pawn shops shall furthermore be subject to the proper regulations.

TITLE XI.

Depositum.

CHAPTER FIRST.

Depositum in general and its different kinds.

ART. 1758. A depositum is constituted from the time a person receives a thing belonging to another with the obligation of keeping and returning it.

ART. 1759. A depositum may be constituted judicially or extrajudicially.

CHAPTER SECOND.

Depositum properly speaking.

SECTION FIRST.—*Nature and essence of the contract of depositum.*

ART. 1760. Depositum is a gratuitous contract, unless there is an agreement to the contrary.

ART. 1761. Personal property only can be an object of a depositum.

ART. 1762. An extrajudicial depositum is either necessary or voluntary.

SECTION SECOND.—*Voluntary depositum.*

ART. 1763. A voluntary depositum is that in which the delivery is made by the will of the bailor. The depositum may be made by two or more persons who believe themselves to have a right to the thing bailed in the hands of a third person, who shall, in a proper case, deliver said thing to the proper person.

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ART. 1764. If a person qualified to contract accepts the depositum made by another who is an incapacitated person, the former is subject to all the obligations of a bailee, and may be compelled to return it by the guardian, curator, or administrator of the person who made the depositum, or by the same person, should he become qualified.

ART. 1765. If the depositum has been made by a qualified person, in the hands of another who is incapacitated, the bailor shall only have the action to recover the thing bailed as long as it remains in the possession of the bailee, or to compel the latter to pay him the sum by which he may have profited by the thing, or its price.

SECTION THIRD.—*Obligations of the bailee.*

ART. 1766. A bailee is obliged to keep the thing, and, when required, to return it to the bailor or to his legal representatives, or to the person who may have been designated in the contract. His liability, with regard to the keeping and loss of the thing, shall be governed by the provisions of title first of this book.

ART. 1767. The bailee can not make use of the thing bailed without the express permission of the bailor.

Otherwise he shall be liable for losses and damages.

ART. 1768. When the bailee has permission to make use of the thing bailed, the contract loses the character of a depositum and becomes a loan or a commodatum.

The permission shall not be presumed, and its existence must be proven.

ART. 1769. When the thing bailed is delivered closed and sealed, the bailee must return it in the same condition, and shall be liable for the losses and damages if the seal or lock should have been broken by his fault.

Such bailee is presumed to be to blame unless the contrary is proven.

With regard to the value of the thing bailed, the statement of the bailor shall be admitted when the forcible opening can be charged to the bailee, should there be no proof to the contrary.

ART. 1770. The thing bailed shall be returned with all its proceeds and accretions.

Should the depositum consist of money, the provisions relating to agents, contained in article 1724, shall be applied to the bailee.

ART. 1771. The bailee can not demand that the bailor prove that he is the owner of the thing bailed.

Nevertheless, should he discover that the thing has been stolen and who is its true owner, he must inform the latter of the depositum.

If the owner, notwithstanding this, does not claim the depositum within the term of one month, the bailee shall be free from any liability by returning the thing bailed to the person from whom he received it.

ART. 1772. If there are two or more bailors, and they should not be joint and the thing can be divided, each one can demand his part only.

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When they are joint bailors, or the thing does not admit of division, the provisions of articles 1141 and 1142 of this code shall govern.

ART. 1773. When the bailor loses his capacity to contract, after having made the depositum, the latter can not be returned except to the persons who have the administration of his property and rights.

ART. 1774. When, on making the depositum, a place was designated for the return of the thing bailed, the bailee must take the thing bailed to such place; but the expense incurred by the conveyance shall be charged to the bailor.

Should no place have been designated for the return, it shall be made at the place where the thing bailed may be, even should it not be the same place where the depositum was made, provided there was no malice on the part of the bailee.

ART. 1775. The depositum shall be returned to the bailor when he claims it, even though a specified term or time for such return may have been fixed in the contract.

This provision shall not be observed when the depositum in the possession of the bailee has been judicially attached, or should the latter have been notified of the objection of a third person to the return or to the transfer of the thing bailed.

ART. 1776. The bailee, who may have sufficient reasons for not keeping the depositum, may, even before the term designated, return it to the bailor, and if the latter refuses it, he may obtain its consignation from the judge.

ART. 1777. The bailee, who may have lost the thing bailed through force majeure and received another in its place, shall be obliged to deliver the latter to the bailor.

ART. 1778. The heir of the bailor who, in good faith, may have sold the thing which he did not know was bailed, is only obliged to return the price he may have received or to assign his actions against the purchaser in case the price should not have been paid to him.

SECTION FOURTH.—*Obligations of the bailor.*

ART. 1779. A bailor is obliged to reimburse the bailee for the expenses he may have incurred in the preservation of the thing bailed, and to indemnify him for all the injuries he may have suffered by reason of the depositum.

ART. 1780. The bailee may retain the thing bailed until the full payment of what is due him by reason of the depositum.

SECTION FIFTH.—*Necessary depositum.*

ART. 1781. A depositum is necessary:

1. When made in compliance with a legal obligation.

2. When it takes place on account of any calamity, such as fire, ruin, pillage, shipwreck, or other similar cases.

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ART. 1782. The depositum included in the first number of the preceding article shall be governed by the provisions of the law which establishes it, and, in the absence thereof, by those of voluntary depositum.

Those included in the second number shall be governed by the rules of voluntary depositum.

ART. 1783. The depositum of goods made by travelers in inns or hostelries shall also be considered a necessary one. The keepers of inns and hostelries are liable for them as such bailees, provided that notice thereof may have been given to them or to their employees, and that the travelers on their part take the precautions which said innkeepers or their substitutes may have advised them concerning the care and vigilance of said goods.

ART. 1784. The liability referred to in the preceding article shall include damages to the goods of the travelers caused by servants or employees of the keepers of inns or hostelries as well as by strangers, but not those arising from robbery or which may be caused by any other case of force majeure.

CHAPTER THIRD.

Sequestration.

ART. 1785. A judicial deposit or sequestration takes place when an attachment or placing in security of property in litigation is ordered.

ART. 1786. Personal as well as real property may be subject to sequestration.

ART. 1787. The bailee of the property or things sequestrated can not be released from his charge until the controversy which caused it is ended, unless the judge should order it on account of the consent of all the persons interested, or for any other legal cause.

ART. 1788. The bailee of property sequestrated is obliged to comply with regard thereto with all the obligations of a good father of a family.

ART. 1789. Judicial sequestration shall be governed by the provisions of the law of civil procedure in whatever is not prescribed in this code.

TITLE XII.

Aleatory contracts, or those depending on chance.

CHAPTER FIRST.

General provision.

ART. 1790. By an aleatory contract one of the parties binds himself, or both mutually bind themselves, to give or do something as an equivalent for what the other party is to give or do in case of the occurrence of an event which is uncertain or may happen at an undetermined time.

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CHAPTER SECOND.

Insurance contracts.

ART. 1791. An insurance contract is one by which the underwriter is liable for the fortuitous damages which may occur to the insured personal or real property, in consideration of a certain price, which may be unrestrictedly fixed by the parties.

ART. 1792. Two or more owners may mutually insure against fortuitous damages which may occur to their respective property. This contract is called mutual insurance, and, when it has not been otherwise stipulated therein, it is understood that such damages shall be paid by all the contracting parties in proportion to the value of the property which each one has insured.

ART. 1793. An insurance contract must be made in a public or private instrument signed by the contracting parties.

ART. 1794. Said instrument must specify—

1. The designation and situation of the things insured and their value.
2. The kind of risks for which indemnity is stipulated.
3. The day and hour on which the effects of the contract commence and end.
4. All the other conditions to which the contracting parties have agreed.

ART. 1795. The contract is of no effect with regard to the part in which the amount of the insurance exceeds the value of the thing insured, and more than one insurance can not be collected for the whole value of the same.

Should two or more insurance contracts exist involving the same object, each underwriter shall be liable for the damage, in proportion to the capital he may have insured, until the full value of the thing insured has been paid by them.

ART. 1796. Should the damage occur, the insured must inform the underwriter and all the other persons concerned thereof within the stipulated time, and, in its absence, within twenty-four hours, to be counted from the time the insured had knowledge of the loss. Should he not do so, he shall have no action against them.

ART. 1797. A contract shall be void if at the time it was made the insured knew that the damage which was the object of the same had already occurred, or if the underwriter knew that the property insured was already free from said danger.

CHAPTER THIRD.

Gambling and betting.

ART. 1798. The law does not permit any action to claim what is won in a game of chance, luck, or hazard; but the person who loses can not recover what he may have voluntarily paid, unless there should have been fraud, or should he be a minor or incapacitated to administer his property.

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ART. 1799. The provisions of the foregoing article with regard to gambling are also applicable to betting.

Bets analogous to prohibited games are considered as prohibited.

ART. 1800. Games contributing to the exercise of the body, such as those the object of which is to acquire skill in the management of arms, and foot or horse races, by vehicles, ball games, and others of a similar character are not considered prohibited.

ART. 1801. A person who loses in a game or a bet which is not prohibited is civilly liable.

Nevertheless, the judicial authority may either not admit the claim when the sum which was wagered in the game or bet is excessive, or may reduce the obligation to the amount it may exceed the customs of a good father of a family.

CHAPTER FOURTH.

Life annuities.

ART. 1802. An aleatory contract of annuity binds the debtor to pay a pension or annual income to one or more specified persons for life, for a principal in personal or real property, the ownership of which is at once transferred to said debtor charged with the income.

ART. 1803. An annuity may be constituted on the life of the person who gives the capital, on that of a third person, or on that of several persons.

It may also be constituted in favor of the person or persons for whose life it is granted, or in favor of another or other different persons.

ART. 1804. An annuity constituted on the life of a person deceased at the time of its execution, or who, at the same time, may be suffering from disease which may cause his death within the twenty days following that date, is void.

ART. 1805. Default in payment of pensions due does not authorize the receiver of the life annuity to demand the reimbursement of the principal, nor to retake possession of the estate alienated; he shall only have the right to judicially demand the payment of the income in arrears and security for the future ones.

ART. 1806. The annuity pertaining to the year in which the person who enjoys it dies shall be paid in proportion to the days he may have lived; if it was to be paid in installments in advance, the total amount for the term which began during his life shall be paid.

ART. 1807. A person who, for a good consideration, constitutes an annuity on his property, may dispose, at the time of the execution of the contract, that said annuity shall not be subject to attachments for debts of the annuitant.

ART. 1808. An annuity can not be demanded without proving the existence of the person on whose life it may be constituted.

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TITLE XIII.

Compromises and arbitrations.

CHAPTER FIRST.

Compromises.

ART. 1809. A compromise is a contract by which each of the parties in interest, by giving, promising, or retaining something, avoids the provocation of a suit, or terminates one that has already been instituted.

ART. 1810. A guardian can not compromise with regard to the rights of a person who is subject to guardianship, except in the manner prescribed in No. 12 of article 269 and in article 274 of this code.

The father, and the mother in a proper case, may compromise with regard to the property and rights of the child who is under his or her authority, but if the value of the object involved in the compromise should exceed 2,000 pesetas, it shall have no effect without judicial approval.

ART. 1811. Neither the husband nor the wife can compromise with regard to dowry property and rights, except in the cases and with the formalities established for alienating or encumbering them.

ART. 1812. Corporations which have a judicial personality may only make compromises in the manner and with the requisites necessary to alienate their property.

ART. 1813. A civil action arising from a crime may be compromised, but the public action for the imposition of the legal penalty shall not be extinguished thereby.

ART. 1814. No compromise can be made with regard to the civil status of persons, nor with regard to matrimonial questions, nor future support.

ART. 1815. A compromise shall only include the objects specifically determined therein or which from a necessary inference from its words must be considered as included therein.

A general renunciation of rights shall be understood as including only those relating to the question with regard to which the compromise has been made.

ART. 1816. A compromise has, with regard to the parties, the same authority as *res adjudicata;* but summary proceedings shall not be proper except when the fulfillment of a judicial compromise is in question.

ART. 1817. A compromise, in which error, deceit, violence, or forgery of documents is involved, shall be subject to the provisions of article 1265 of this code.

Nevertheless, one of the parties can not set up an error of fact against the other, if by reason of a compromise the latter has withdrawn from a suit already begun.

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ART. 1818. The discovery of new instruments is not a cause for the annulment or rescission of a compromise, if there has been no bad faith.

ART. 1819. If a suit having been decided by a final judgment a compromise with regard to the same should take place, because any of the parties interested did not know of the existence of said final judgment, he may demand that the compromise be rescinded.

Ignorance of a revocable judgment is not a cause for controverting a compromise.

CHAPTER SECOND.

Arbitration.

ART. 1820. The same persons who can compromise may also submit their contentions to a third person for decision.

ART. 1821. The provisions of the preceding chapter with regard to compromises are applicable to arbitrations.

With regard to the form of procedure in arbitrations and to the extent and effects thereof, the provisions of the law of civil procedure shall be observed.

TITLE XIV.

Security.

CHAPTER FIRST.

Nature and extent of security.

ART. 1822. By security a person binds himself to pay or perform for a third person in case the latter should fail to do so.

If the surety binds himself jointly with the principal debtor, the provisions of section fourth, chapter third, title first, of this book shall be observed.

ART. 1823. The security may be conventional, legal, or judicial, gratuitous, or for a valuable consideration.

It may also be constituted, not only in favor of the principal debtor, but in favor of the other surety, either with the consent, ignorance, and even against the opposition of the latter.

ART. 1824. Security can not exist without a valid obligation.

Nevertheless, an obligation, the nullity of which may be claimed by virtue of an exception purely personal on the part of the obligor, as that of minority, may be the subject of security.

From the provisions of the preceding paragraph is excepted the case of a loan made to a minor not emancipated.

ART. 1825. Security may also be given as a guaranty for future debts, the amount of which is not yet known, but no action can be brought against the surety until the debt is determined.

ART. 1826. A surety may bind himself to less but not to more than the principal debtor as to quantity as well as to the burden of the conditions.

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Should he have bound himself for more, his obligation shall be reduced to the limits of that of the debtor.

ART. 1827. Security is not presumed; it must be express and can not be extended further than that specified therein.

If it be simple and indefinite it shall include not only the principal obligation but all its accessories, including the costs of the suit, it being understood, with regard to the latter, that the surety shall only be liable for those incurred after he has been asked to pay.

ART. 1828. A party who is bound to give security must present a person having capacity to bind himself, and with sufficient property to answer for the obligation which he guarantees. The surety shall be understood as subject to the jurisdiction of the judge of the place where this obligation is to be fulfilled.

ART. 1829. If the surety should become insolvent the creditor may demand another who has all the qualifications required by the preceding article. The case is excepted where the creditor has required and stipulated that a specified person should be the surety.

CHAPTER SECOND.

Effects of security.

SECTION FIRST.—*Effects of security between surety and creditor.*

ART. 1830. The surety can not be compelled to pay a creditor until application has been previously made of all the property of the debtor.

ART. 1831. This application can not take place—

1. If the surety has expressly renounced it.
2. If he has jointly bound himself with the debtor.
3. In case of bankruptcy of the debtor.
4. When the debtor can not be judicially sued within the Kingdom.

ART. 1832. In order that the surety may avail himself of the benefit of a levy against the principal he must require it of the creditor as soon as the latter may sue for payment, and determine the property of the debtor which can be sold within Spanish territory and which may be sufficient to cover the amount of the debt.

ART. 1833. After the surety has fulfilled all the conditions of the preceding article, the creditor who is negligent in making a levy upon the property of the principal designated, shall be liable to the extent of the value of said property for the insolvency of the debtor arising from said negligence.

ART. 1834. A creditor may cite the surety should he institute the claim against the principal debtor, but the benefit of a levy against the principal shall always be reserved, even when a judgment is rendered against both of them.

ART. 1835. A compromise made by a surety with a creditor shall have no effect with regard to the principal debtor.

Neither shall that made by the latter have any effect with regard to a surety against his will.

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ART. 1836. A surety of a surety enjoys the benefit of a levy with regard to the surety as well as to the principal debtor.

ART. 1837. Should there be several sureties but only one debtor for the same debt, the liability therefor shall be divided among them all. The creditor can claim from each surety nothing but the proper portion which he may have to pay, unless the joint liability has been expressly stipulated.

The benefit of division against the co-sureties ceases in the same cases and for the same reasons as that for levy against the principal debtor.

SECTION SECOND.—*Effects of security between the debtor and the surety.*

ART. 1838. A surety who pays for a debtor shall be indemnified by the latter.

The indemnity consists of—

1. The total amount of the debt.
2. Legal interest on the same from the day on which the payment may have been communicated to the debtor, even when it did not produce interest for the creditor.
3. The expenses incurred by the surety after the latter has informed the debtor that he has been sued for payment.
4. Losses and damages, when proper.

The provisions of this article shall be valid, even should the security have been given without knowledge of the debtor.

ART. 1839. By virtue of such payment the surety is subrogated in all the rights which the creditor had against the debtor.

Should the surety have compromised with the creditor, he can not demand of the debtor more than that which he has really paid.

ART. 1840. If the surety pays without informing the debtor, the latter may use against him all the exceptions which he could have set up against the creditor at the time of making the payment.

ART. 1841. If the debt was for a term and the surety paid it before it was due, he can not require the debtor to reimburse him until the period has expired.

ART. 1842. If the surety has paid without notifying the debtor, and the latter, not having knowledge of the payment, also pays it, the former has no remedy against the debtor, but only against the creditor.

ART. 1843. The surety, even before paying, may proceed against the principal debtor—

1. When he is sued for the payment.
2. In case of bankruptcy or insolvency.
3. When the debtor has bound himself to relieve him from the security within a specified term, and this term has expired.
4. When the debt has become demandable because the term in which it should have been paid has expired.

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5. At the end of ten years, when the principal obligation has not a fixed term for its expiration, unless it be of such a nature that it can not be extinguished except in a period greater than ten years.

In all these cases the action of the surety tends to obtain his release from the security or a guaranty to defend him against any proceedings of the creditor and from the danger of insolvency of the debtor.

SECTION THIRD.—*Effects of security as between the cosureties.*

ART. 1844. When there are two or more sureties for the same debtor and for the same debt, the one who has paid it may demand of each of the others the part which he or they should proportionally have paid.

If any one of them should be insolvent, his part shall be paid by all in the same proportion.

In order that the provision of this article may be applicable, the payment must have been made by virtue of judicial proceedings or when the principal debtor should have made an assignment or is a bankrupt.

ART. 1845. In the case of the preceding article the cosureties may set up against the one who paid, the same exceptions which would have pertained to the principal debtor against the creditor, and which may not be purely personal on the part of the same debtor.

ART. 1846. A subsurety, in case of the insolvency of the surety for whom he bound himself, remains liable to the cosureties in the same terms as the surety was bound.

CHAPTER THIRD.

Extinguishment of security.

ART. 1847. The obligation of the surety shall expire at the same time as that of the debtor, and for the same causes as all other obligations.

ART. 1848. A merger which takes place in the person of the debtor and of the surety when one of them inherits from the other does not extinguish the obligation of the subsurety.

ART. 1849. If the creditor voluntarily accepts real estate or any other goods in payment of the debt, even should he afterwards lose them on account of eviction, the surety shall be released.

ART. 1850. Liberation, made by a creditor of one of the sureties without the consent of the others, shall benefit all the others to the extent of the portion of the surety to whom it has been granted.

ART. 1851. The extension granted to the debtor by the creditor, without the consent of the surety, extinguishes the security.

ART. 1852. The sureties, even when they are joint, shall be released from their obligation whenever by any act of the creditor they can not be subrogated to the rights, mortgages, and privileges of the same.

ART. 1853. A surety may set up against the creditor all the exceptions which pertain to the principal debtor and which may be inherent to the debt; but not those which may be purely personal to the debtor.

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CHAPTER FOURTH.

Legal and judicial security.

ART. 1854. Sureties, who must act by provision of law or by a judicial decree, shall possess the qualifications prescribed in article 1828.

ART. 1855. If the person who is bound to give security, in the cases of the preceding article, should not obtain it, a pledge or mortgage which may be considered sufficient to cover his obligation shall be admitted in place thereof.

ART. 1856. A judicial surety can not demand a levy on the property of the principal debtor.

A subsurety who offers security for a surety, in the same case, can not demand either a levy on the property of the debtor nor on that of the surety.

TITLE XV.

Contracts of pledge, mortgage, and antichresis.

CHAPTER FIRST.

Provisions common to pledge and mortgage.

ART. 1857. The following are essential requisites of the contracts of pledge and of mortgage:

1. That they be constituted to secure the fulfillment of a principal obligation.

2. That the thing pledged or mortgaged is owned by the person who pledges or mortgages it.

3. That the persons who constitute the pledge or mortgage have the free disposition of their property, and, should they not have it, that they are legally authorized for the purpose.

Third persons, strangers to the principal obligation, may secure the latter by pledging or mortgaging their own property.

ART. 1858. It is also essential in these contracts that when the principal obligation is due, the things of which the pledge or mortgage consists may be alienated to pay the creditor.

ART. 1859. A creditor can not appropriate to himself the things given in pledge or mortgage, nor dispose of them.

ART. 1860. The pledge and the mortgage are indivisible, even if the debt should be divided among the legal representatives of the debtor or of the creditor.

Therefore, an heir of the debtor who may have paid a part of the debt can not request that the pledge or mortgage be proportionally extinguished as long as the debt has not been paid in full.

Neither can the heir of the creditor, who received his part of the debt, return the pledge nor cancel the mortgage to the prejudice of the other heirs who have not been paid.

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From these provisions is excepted the case in which there are several things given in mortgage or pledge and each of them secures only a specified part of the credit.

The debtor in such case shall be entitled to have the pledge or mortgage extinguished in proportion as he pays the part of the debt for which each thing is specially liable.

ART. 1861. Contracts of pledge and mortgage may secure all kinds of obligations, either pure or subject to conditions precedent or subsequent.

ART. 1862. A promise to constitute a pledge or mortgage gives rise only to a personal action among the contracting parties, without prejudice to the criminal liability which a person incurs who defrauds another, offering in pledge or mortgage as unincumbered things which he knew were incumbered, or pretending to be the owner of things which do not belong to him.

CHAPTER SECOND.

Pledge.

ART. 1863. Besides the requisites mentioned in article 1857 it is necessary, in order to constitute the contract of pledge, that the pledge should be placed in possession of the creditor or of a third person by common consent.

ART. 1864. All personal property which is the object of commerce may be given as a pledge, provided it be capable of being possessed.

ART. 1865. A pledge shall not be effective against a third person, when evidence of its date does not appear in a public instrument.

ART. 1866. A contract of pledge gives a right to the creditor to retain the thing in his possession or in that of the third person to whom it may have been delivered until his credit is paid.

If, while the creditor retains the pledge, the debtor should contract with him another debt demandable before the first one has been paid, the former may extend the retention until both credits are paid him, even should it not have been stipulated that the pledge should be subject to the security for the second debt.

ART. 1867. The creditor must take care of the thing given in pledge with the diligence of a good father of a family; he has a right to recover the expenses incurred for its preservation and is liable for its loss or deterioration, in accordance with the provisions of this code.

ART. 1868. If the pledge produces interest, the creditor shall set off that collected by him against that due him, and if none is due him, or to the extent that it exceeds that legally due, he shall charge it to the principal.

ART. 1869. As long as the thing given in pledge is not taken by eminent domain, the debtor continues to be the owner thereof.

Nevertheless, the creditor may exercise the actions which pertain to the owner of the thing pledged, in order to reclaim or defend it against a third person.

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ART. 1870. The creditor can not make use of a thing given in pledge without the authorization of the owner, and should he do so, or misuse said thing in any other manner, the latter may demand that it be made a depositum.

ART. 1871. The debtor can not demand the restitution of the thing pledged, against the will of the creditor, until he has paid the debt and its interest, with the expenses, in a proper case.

ART. 1872. A creditor to whom the debt has not been paid at the proper time may proceed, before a notary, to alienate the pledge. This alienation must necessarily take place at public auction, and with the citation of the debtor and of the owner of the pledge, in a proper case. If the pledge should not have been alienated at the first auction a second one, with the same formalities, may be held; and should no result be attained the creditor may become the owner of the pledge. In such case he shall be obliged to give a discharge for the full amount of his credit.

If the pledge should consist of securities quoted on exchange, they shall be sold in the manner prescribed in the code of commerce.

ART. 1873. With regard to pawnshops and other public institutions which by their character or special purpose loan money on pledge, the special laws and regulations relating thereto, and subsidiarily the provisions of this title, shall be observed.

CHAPTER THIRD.

Mortgage.

ART. 1874. The following property only can be the subject of a mortgage contract:

1. Real property.
2. Property rights in real estate which can be alienated in accordance with law.

ART. 1875. Besides the requisites mentioned in article 1857, it is indispensable, in order that the mortgage may be validly constituted, that the instrument in which it is created be entered in the registry of property.

The persons in whose favor the law creates a mortgage shall have no other right than to demand the execution and entry of the instrument in which the mortgage may be constituted, without prejudice to the provisions of the mortgage law in favor of the State, provinces, and towns for the amount of the last year's taxes, and in favor of the underwriters for the premium of the insurance.

ART. 1876. A mortgage directly and immediately subjects the property on which it is imposed, whoever its possessor may be, to the fulfillment of the obligation for the security of which it was created.

ART. 1877. A mortgage includes the natural accessions, improvements, growing fruits, and rents not collected when the obligation is due, and the amount of the indemnities granted or due the owner by

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the underwriters of the property mortgaged or by virtue of the exercise of eminent domain by reason of public utility, with the declarations, amplifications, and limitations established by law, in case the estate continues in the possession of the person who mortgaged it, as well as when it passes into the hands of a third person.

ART. 1878. A mortgage credit may be alienated or assigned to a third person, wholly or partially, with the formalities required by law.

ART. 1879. A creditor may demand from the third possessor of the property mortgaged the payment of the part of the credit secured with what the latter may possess, in the terms and with the formalities established by law.

ART. 1880. The form, extension, and effects of the mortgage, as well as all that relating to its creation, modification, and extinction, and all that which may not have been included in this chapter, shall be subject to the provisions of the mortgage law, which continues in force.

CHAPTER FOURTH.

Antichresis.

ART. 1881. By antichresis a creditor acquires a right to receive the fruits of real property of his debtor, with the obligation to apply them to the payment of interest, if due, and afterwards to the principal of his credit.

ART. 1882. A creditor is obliged to pay the taxes and charges which burden the estate, unless there is an agreement to the contrary.

He shall also be obliged to pay the expenses necessary for its preservation and repair.

From the fruits there shall be deducted the sums which he may employ for both purposes.

ART. 1883. The debtor can not recover the enjoyment of the real property without previously paying in full what he owes to his creditor.

But the latter, in order to free himself from the obligations imposed on him by the preceding article, may always compel the debtor to reenter upon the enjoyment of the estate, unless there be an agreement to the contrary.

ART. 1884. The creditor does not acquire the ownership of the real property by nonpayment of the debt within the term agreed upon.

Any stipulation to the contrary shall be void. But in this case the creditor may demand, in the manner prescribed in the law of civil procedure, the payment of the debt or the sale of the realty.

ART. 1885. The contracting parties may stipulate that the interest of the debt be set off against the fruits of the estate given in antichresis.

ART. 1886. The last paragraph of article 1857, the second paragraph of article 1866, and articles 1860 and 1861 are applicable to this contract.

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TITLE XVI.

Obligations contracted without agreement.

CHAPTER FIRST.

Quasi contracts.

ART. 1887. Quasi contracts are licit and purely voluntary acts by which the author thereof becomes obligated with regard to a third person, and, sometimes, by which there results a reciprocal obligation between the parties concerned.

SECTION FIRST.—*Management of another's business.*

ART. 1888. A person who voluntarily takes charge of the agency or administration of the business of another, without authorization, is obliged to continue managing the same until the end of the business and its incidents, or to notify the interested person in order that the latter may come to substitute him in his management, should he be in a condition to do so for himself.

ART. 1889. An officious manager must fulfill his charge with all the diligence of a good father of a family and indemnify for injuries which, through his fault or negligence, may be caused to the owner of the property or business he may be managing.

Nevertheless, the courts may reduce the amount of the indemnity, according to the circumstances of the case.

ART. 1890. If the manager should delegate all or some of the duties of his charge to another person, he shall answer for the acts of the delegate, without prejudice to the direct obligation of the latter to the owner of the business.

The liability of the managers, should there be two or more, shall be joint.

ART. 1891. The manager of a business shall be liable for a fortuitous event, should he undertake risky transactions, which the owner was not in the habit of undertaking, or should he have relegated the interests of the latter in favor of his own business.

ART. 1892. The ratification of the management by the owner of the business produces the effects of an express authorization.

ART. 1893. The owner of property or a business who avails himself of the advantages of the administration of another, even when he has not expressly ratified it, shall be liable for the obligations contracted for his benefit, and he shall indemnify the administrator for the necessary and useful expenses which he may have incurred and for the losses he may have suffered in the discharge of his duties.

The same obligation shall pertain to said owner when the object of said administration should have been to avoid any imminent or manifest damage, even when no profit results therefrom.

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ART. 1894. When, without knowledge of the person who is bound to give support, a stranger supplies it, the latter shall have the right to demand the same from the former, unless it appears that he gave it out of charity, and without the intention of recovering it.

The funeral expenses, in proportion to the status of the person and to the customs of the locality, must be paid by those who during life would have had the obligation to support him, even though the deceased should have left no property.

SECTION SECOND.—*Collection of what is not due.*

ART. 1895. If a thing is received when there was no right to claim it and which, through an error, has been unduly delivered, there arises an obligation to restore the same.

ART. 1896. A person who accepts a payment not due, should he have acted in bad faith, must pay the legal interest when money is involved, or for the fruits collected or which ought to have been collected, if the thing received should produce them.

He shall furthermore be liable for the impairments the thing may have suffered on account of any cause whatsoever and for the damages caused to the person who delivered it, until he recovers it. He shall not be liable for fortuitous events, when they may have affected the things in the same manner should they have been in the possession of the person who delivered them.

ART. 1897. A person, who in good faith should have accepted a payment of a certain and specified thing not due, shall only be liable for the impairment or loss of the latter and its accessories, in so far as he may have enriched himself by it. Should he have alienated it he shall return the price or assign the action to recover it.

ART. 1898. With regard to the payment for improvements and expenses, made by the person who unduly received the thing, the provisions of title fifth of book second shall be observed.

ART. 1899. The person shall be exempted from the obligation of restitution, who, believing in good faith that the payment was made on the account of a legitimate and existing credit, should destroy the title or should allow the action to prescribe, or should abandon the pledges or cancel the guaranties of his right. A person who has unduly made a payment may only address himself to the true debtor or to the sureties with regard to whom the action may still be in force.

ART. 1900. The proof of payment is incumbent upon the person who claims to have made the same. He shall also be obliged to prove the error under which he made it, unless the defendant denies having received the thing claimed from him. In such case, if the plaintiff should have proven the delivery, he shall be released from any further proof. This does not limit the right of the defendant to justify that what he is supposed to have received was due him.

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ART. 1901. It is presumed that there was an error in the payment when a thing which was never owed or which was already paid for has been delivered, but the person from whom the return is asked may prove that the delivery was made through liberality or for any other sufficient cause.

CHAPTER SECOND.

Obligations which arise from fault or negligence.

ART. 1902. A person who by an act or omission causes damage to another when there is fault or negligence shall be obliged to repair the damage so done.

ART. 1903. The obligation imposed by the preceding article is demandable, not only for personal acts and omissions, but also for those of the persons for whom they should be responsible.

The father, and on his death or incapacity the mother, is liable for the damages caused by the minors who live with them.

Guardians are liable for the damages caused by minors or incapacitated persons who are under their authority and live with them.

Owners or directors of an establishment or enterprise are equally liable for the damages caused by their employees in the service of the branches in which the latter may be employed or on account of their duties.

The State is liable in this sense when it acts through a special agent, but not when the damage should have been caused by the official to whom properly it pertained to do the act performed, in which case the provisions of the preceding article shall be applicable.

Finally, masters or directors of arts and trades are liable for the damages caused by their pupils or apprentices while they are under their custody.

The liability referred to in this article shall cease when the persons mentioned therein prove that they employed all the diligence of a good father of a family to avoid the damage.

ART. 1904. A person who pays for the damage caused by his employees may recover from the latter what he may have paid.

ART. 1905. The possessor of an animal, or the one who uses the same, is liable for the damages it may cause, even when said animal should escape from him or stray.

This liability shall cease only in case the damage should arise from force majeure or from the fault of the person who may have suffered it.

ART. 1906. The owner of a game preserve shall be liable for the damage caused by the game to the neighboring estates, should he not have done what may have been necessary to avoid the increase of the same or should he have hindered the efforts of the owners of said estates to hunt.

ART. 1907. The owner of a building is liable for the damages which may result from the collapse of the whole or a part thereof, if it should occur through the absence of the necessary repairs.

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ART. 1908. The owners shall also be liable for the damages caused—

1. By the explosion of machines which may not have been cared for with due diligence, and for kindling of explosive substances, which may not have been placed in a safe and proper place.

2. By excessive smoke, which may be noxious to persons or properties.

3. By the fall of trees, located in places of transit, when not caused by force majeure.

4. By the emanations of sewers or deposits of infectious matters, when constructed without precautions proper for the place where they are located.

ART. 1909. Should the damages referred to in the two preceding articles arise from defects in construction, the third person who suffers it may only claim damages of the architect, or, in a proper case, of the constructor, within the legal period.

ART. 1910. The head of a family who dwells in a house, or in a part of the same, is liable for the damages caused by the things which may be thrown or which may fall therefrom.

TITLE XVII.

Concurrence and preference of credits.

CHAPTER FIRST.

General provisions.

ART. 1911. A debtor is liable for the fulfillment of his obligations with all his present and future property.

ART. 1912. A debtor may judicially ask from his creditors a reduction in the amount and an extension of time in the payment of his debts, or either of the two things, but the exercise of this right shall not produce judicial effects, except in the cases and in the manner prescribed in the law of civil procedure.

ART. 1913. A debtor, whose liabilities are greater than his assets, and who may have failed to meet his current obligations, must file a petition in bankruptcy (*concurso*) in a competent court, as soon as he is aware of being in such condition.

ART. 1914. A declaration in bankruptcy disqualifies the bankrupt (*concursado*) to administer his property and any other, which by law pertains to him.

He shall be reinstated in his rights, upon the termination of the bankruptcy, if no cause preventing it should appear from the qualification of bankruptcy.

ART. 1915. By the declaration in bankruptcy, all the immature debts of the bankrupt become due.

Should they be paid before the time fixed in the obligation, they shall suffer the discount in proportion to the amount of the legal interest on the money.

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ART. 1916. From the date of the declaration in bankruptcy, all the debts of the bankrupt shall cease to bear interest, with the exception of mortgage and pledge credits to the amount of their respective guaranties.

If, after the principal of the debts has been paid, a balance should remain, interest shall be paid, reduced to the legal rate, unless that stipulated is less.

ART. 1917. Settlements, which the debtor and his creditors may judicially agree to, with the formalities of law with regard to the reduction of the amount and extension of time, or in bankruptcy, shall be binding on all the concurrent parties and on those who, having been cited and notified in due form, should not have protested in time. The creditors who, having the right to abstain, should have duly made use of such right, are excepted. The creditors included in articles 1922, 1923, and 1924 have the right to abstain.

ART. 1918. If the settlement for reduction of amount and extension of time is agreed to with creditors of the same class, the legal decision of the majority shall be binding on all, without prejudice to the respective preference of the credits.

ART. 1919. If the debtor should comply with the settlement, his obligations shall be extinguished in the terms stipulated in the same; but, should he fail to comply with the whole or a part of said settlement, the rights of the creditors shall revive for the sums of their original credits which they may not have received, and any of them may demand a declaration in or continuance of bankruptcy.

ART. 1920. Should there be no express stipulation to the contrary between the debtor and the creditors, the latter shall preserve their rights, after the termination of the bankruptcy, to collect from the property which the debtor may subsequently acquire that part of their credits not received.

CHAPTER SECOND.

Classification of credits.

ART. 1921. Credits shall be classified for their graduation and payment in the order and manner specified in this chapter.

ART. 1922. With regard to specified personal property of the debtor, the following are preferred:

1. Credits for the construction, repair, preservation, or for the amount of the sale of personal property which may be in the possession of the debtor to the extent of the value of the same.

2. Those secured by a pledge which may be in the possession of the creditor, with regard to the thing pledged and to the extent of its value.

3. Those guaranteed by a security of goods or securities constituted in a public or commercial establishment with regard to the security and for the value of the same.

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4. Credits for transportation, with regard to the goods transported, for the amount of said transportation, expenses and rates of carriage and preservation, until the time of the delivery and for a period of thirty days afterwards.

5. Expenses of boarding with regard to the personal property of the debtor remaining in inns.

6. Credits for seeds and expenses of cultivation and harvesting, advanced to the debtor, with regard to the fruits of the crops to which they were applied.

7. Credits for rents and leases for one year with regard to the personal property of the lessee existing on the estate leased and on the fruits thereof.

If the personal property, with regard to which the preference is allowed, has been surreptitiously removed, the creditor may claim it from the person who has the same, within the term of thirty days counted from the time it was so removed.

ART. 1923. With regard to determined real property and property rights of the debtor, the following are preferred:

1. The credits in favor of the State, with regard to the property of tax payers for the amounts of the last annual assessments, due and not paid, of the taxes which burden the same.

2. The credits of insurers, with regard to the property insured, for the insurance premium for two years, and should the insurance be mutual, for the last two dividends declared.

3. Mortgage and agricultural credits (*refaccionarios*) entered and recorded in the registry of property, with regard to the property mortgaged, or which has been the object of the agricultural loan (*refacción*).

4. Credits, of which a cautionary notice has been made in the registry of property by virtue of a judicial mandate, by reason of attachments, sequestrations, or execution of judgments, with regard to the property entered therein and only with regard to subsequent credits.

5. Agricultural credits not entered nor recorded with regard to the real estate to which the agricultural loan (*refacción*) relates, and only with regard to other credits different from those mentioned in the four preceding numbers.

ART. 1924. With regard to the other personal and real property of the debtor, the following credits are preferred:

1. Credits in favor of the province or municipality for the taxes of the last year, due and unpaid, not included in No. 1 of article 1923.

2. Those due—

A. For judicial expenses and those of administration of the bankruptcy for the common interest of the creditors, made with the proper authorization or approval.

B. For the funeral expenses of the debtor, according to the customs of the place, and also those of his wife and of his children, under their parental authority should they have no property of their own.

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C. For expenses of the last illness of said persons, incurred during the last year, counted up to the day of their death.

D. For daily wages and salaries of employees and domestic servants for the last year.

E. For advances made to the debtor for himself and his family, constituted under his authority, in provisions, clothing, or shoes for the same period of time.

F. For income for support during the proceedings in bankruptcy unless they are based on mere beneficence.

3. Credits which without a special privilege appear—

A. In a public instrument.

B. In a final judgment, should they have been the object of litigation.

These credits shall have preference among themselves according to the priority of dates of the instruments and of the judgments.

ART. 1925. Credits of any other kind or for any other consideration not included in the preceding article shall have no preference.

CHAPTER THIRD.

Priority of payment of credits.

ART. 1926. Credits which enjoy preference with regard to certain personal property exclude all the others to the extent of the value of the personal property to which the preference refers.

When two or more creditors claim preference with regard to certain personal property, the following rules shall be observed as to priority of payment:

1. Credits secured by a pledge exclude all others to the extent of the value of the thing given in pledge.

2. In case there is a security, should the latter be legally constituted in favor of more than one creditor, the priority between them shall be determined by the order of the dates of the execution of the guaranty.

3. Credits for advances for seeds, expenses of cultivation, and harvesting, shall be preferred over those for rents and leases, with regard to the fruits of the crop for which they were incurred.

4. In all other cases the value of the personal property shall be distributed pro rata among the credits which enjoy special preference with regard to the same property.

ART. 1927. Credits which enjoy preference with regard to certain real property or property rights exclude all others for their amounts to the extent of the value of the real estate or property rights to which the preference refers.

If two or more credits affecting certain real property or property rights should concur, the following rules shall be observed with regard to their priority:

1. Those mentioned in Nos. 1 and 2 of article 1923 shall be preferred, according to their order, to those included in the other numbers of the same article.

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2. Mortgages and agricultural credits entered or recorded, mentioned in No. 3 of said article 1923, and those included in No. 4 of the same, shall enjoy priority among themselves according to the priority of the respective entries or record in the registry of property.

3. Agricultural credits not recorded or entered in the registry, referred to in No. 5 of article 1923, shall enjoy preference among themselves in the inverse order of their priority.

ART. 1928. The residue of the estate of a debtor, after the credits which enjoy preference with regard to certain property, personal or real, have been paid, shall become part of the free property which he may possess for the payment of the other credits.

Those which enjoy preference with regard to certain property, personal or real, and which should not have been totally paid with the amount of such property, shall be paid with regard to the deficit in the order and place pertaining thereto, according to their respective characters.

ART. 1929. Credits which have no preference with regard to certain property, and those which have preference for the amount not collected, or when the right of preference should have prescribed, shall be paid according to the following rules:

1. In the order established in article 1924.

2. Those preferred by dates, according to their order, and those which have a common date, pro rata.

3. Common credits, referred to in article 1925, without consideration of their dates.

TITLE XVIII.

Prescription.

CHAPTER FIRST.

General provisions.

ART. 1930. Ownership and other property rights are acquired by prescription in the manner and under the conditions specified by law.

Rights and actions, of any kind whatsoever, also are extinguished by prescription in the same manner.

ART. 1931. Persons qualified to acquire property or rights by other legal means may also acquire the same by prescription.

ART. 1932. Rights and actions shall extinguish by prescription to the prejudice of all kinds of persons, including judicial persons, in the terms prescribed by law.

Persons incapacitated to administer their property shall always retain the right to sue their legal representatives whose negligence may have been the cause of the prescription.

ART. 1933. Prescription acquired by a coproprietor or owner in common benefits all the others.

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ART. 1934. Prescription produces its judicial effects in favor and against the inheritance, before the latter has been accepted, and during the time granted to make an inventory and for deliberation.

ART. 1935. Persons with the capacity to alienate may renounce the prescription acquired, but not the right to prescription in the future.

Prescription shall be understood as renounced in an implied manner when the renunciation arises from facts which lead to the supposition that the right acquired has been abandoned.

ART. 1936. All things which are the object of commerce are capable of prescription.

ART. 1937. Creditors and any other person interested in validating a prescription may benefit thereby, notwithstanding the express or implied renunciation of the debtor or owner.

ART. 1938. The provisions of this title shall be understood without prejudice to what may be established in this code or in special laws with regard to specified cases of prescription.

ART. 1939. Prescription, which began to run before the publication of this code, shall be governed by the prior laws; but if, after this code became operative, all the time required in the same for prescription has elapsed, it shall be effectual, even if according to said prior laws a longer period of time may be required.

CHAPTER SECOND.

Prescription of ownership and of other property rights.

ART. 1940. For ordinary prescription of ownership and other property rights, it is necessary to possess things in good faith and under a proper title, during the time specified by law.

ART. 1941. Possession must be in the capacity of an owner, public, peaceful, and uninterrupted.

ART. 1942. Acts of a possessory character, performed by virtue of a license, or by mere tolerance on the part of the owner, are of no effect for establishing possession.

ART. 1943. For the effects of prescription, possession is interrupted either naturally or civilly.

ART. 1944. Possession is interrupted naturally, when, for any cause whatsoever, it ceases for more than one year.

ART. 1945. Civil interruption is caused by a judicial citation of the possessor, even should it be by a mandate of an incompetent judge.

ART. 1946. The judicial citation shall be considered as not made and shall not cause interruption:

1. If it should be void by reason of the absence of legal formalities.
2. If the plaintiff should withdraw his complaint or should permit the proceedings to lapse.
3. If the suit against the possessor should be dismissed.

ART. 1947. Civil interruption shall also take place by an action to avoid litigation, provided that within two months from its celebration

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a complaint as to possession or ownership of the thing contested be presented to the judge.

ART. 1948. Any express or implied acknowledgement which the possessor may make with regard to the right of the owner also interrupts possession.

ART. 1949. Against the title recorded in the registry of property, the ordinary prescription of ownership or of property rights shall not obtain to the prejudice of a third person, except by virtue of another title similarly recorded, and the time shall begin to run from the date of the entry of the latter.

ART. 1950. Good faith of the possessor consists in his belief that the person from whom he received the thing was the owner of the same, and could convey his title.

ART. 1951. The conditions of good faith, required for possession in articles 433, 434, 435, and 436 of this code, are equally necessary for the determination of said requisite in the prescription of ownership and of other property rights.

ART. 1952. By a proper title is understood that which legally suffices to transfer the ownership or property right, the prescription of which is in question.

ART. 1953. The title for prescription must be true and valid.

ART. 1954. A proper title must be proven; it never can be presumed.

ART. 1955. The ownership of personal property prescribes by uninterrupted possession in good faith for a period of three years.

The ownership of personal property also prescribes by uninterrupted possession for six years, without the necessity of any other condition.

The provisions of article 464 of this code shall be observed with regard to the rights of the owner to recover the personal property lost or of which he may have been illegally deprived, and also with regard to those acquired at an auction, on exchanges, at fairs or markets, or from a merchant legally established or customarily engaged in the traffic of similar objects.

ART. 1956. Personal property stolen or robbed can not prescribe to the persons who stole or robbed the same, nor to their accomplices, or harborers, unless the crime or misdemeanor or their penalties and the action to demand the civil liability, arising from the crime or misdemeanor, have prescribed.

ART. 1957. Ownership and other property rights in real property shall prescribe by possession for ten years as to persons present, and for twenty years with regard to those absent, with good faith and with a proper title.

ART. 1958. For the purposes of prescription, a person who resides in a foreign country or beyond the seas shall be considered as absent.

If said person was present during part of the time and absent during another part, every two years of absence shall be considered as one year to complete the ten years of the time required to be present.

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Absence which is not for a whole and continuous year shall not be considered in the computation.

ART. 1959. Ownership and other property rights in real property shall also prescribe by uninterrupted possession of the same for thirty years without the necessity of title nor good faith and without distinction between present and absent persons, with the exception mentioned in article 539.

ART. 1960. In the computation of the time necessary for prescription, the following rules shall be observed:

1. The actual possessor may complete the time necessary for prescription by adding to his time that of his constituent.

2. It is presumed that the actual possessor, who may have been a possessor at a former period, has continued to be such possessor during the time intervening, unless there is proof to the contrary.

3. The day on which the time begins to run is considered as a whole day, but the last day must be wholly completed.

CHAPTER THIRD.

Prescription of actions.

ART. 1961. Actions are prescribed by the mere lapse of time specified by law.

ART. 1962. Real actions with regard to personal property prescribe after the lapse of six years from the loss of possession, unless the possessor may have during a shorter term acquired the ownership in accordance with article 1955, and with the exception of the cases of loss and public sale, and those of theft and robbery, in which cases the provisions of the third paragraph of said article shall be observed.

ART. 1963. Real actions with regard to real property prescribe after thirty years.

This provision is understood without prejudice to the prescriptions relating to the acquisition of ownership or of property rights by prescription.

ART. 1964. A mortgage action prescribes after twenty years, and those which are personal and for which no special term of prescription is fixed, after fifteen years.

ART. 1965. Among coheirs, coowners, or proprietors of adjacent estates, the action to demand the division of the inheritance, of the thing held in common, or the survey of the adjacent properties does not prescribe.

ART. 1966. Actions to demand the fulfillment of the following obligations prescribe in five years:

1. For the payment of income for support.

2. For the payment of rents, whether derived from rural or from town property.

3. That of any other payments which should have been made annually or in shorter periods.

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ART. 1967. Actions for the fulfillment of the following obligations shall prescribe in three years:

1. For the payment of judges, lawyers, registers, notaries public, experts, agents, and clerks for their charges and fees and the expenses and disbursements incurred by them in the discharge of their duties or offices in the matters to which the obligations refer.

2. For payments to apothecaries for medicines which they have supplied; to professors and teachers for their salaries and stipends for the instruction they have given, or for the exercise of their profession, art, or trade.

3. For the payment of mechanics, servants, and laborers the amounts due for their services, and for the supplies or disbursements they may have incurred with regard to the same.

4. For the payment of board and lodging to innkeepers, and to traders for the value of goods sold to others who are not traders, or who, being such, are engaged in a different trade.

The time for the prescription of actions referred to in the three preceding paragraphs shall be counted from the time the respective services have ceased to be rendered.

ART. 1968. The following prescribe in one year:

1. Actions to recover or retain possession.

2. Actions to demand civil liability for grave insults or calumny, and for obligations arising from the fault or negligence, mentioned in article 1902, from the time the aggrieved person had knowledge thereof.

ART. 1969. The time for the prescription of all kinds of actions, when there is no special provision to the contrary, shall be counted from the day on which they could have been instituted.

ART. 1970. The time for the prescription of actions, the object of which is to demand the fulfillment of obligations with regard to principal with interest or rent, runs from the last payment of rent or interest.

The same shall be understood with regard to the principal of the consignative or transferable annuity.

In emphyteutic and reservative annuities the time for the running of the prescription shall be counted from the last payment of the pension or income.

ART. 1971. The period for the prescription of actions to demand the fulfillment of obligations declared in a judgment shall begin from the day the judgment became final.

ART. 1972. The term for the prescription of actions to demand the rendering of accounts runs from the day on which those who should have rendered them ceased in their charges.

That pertaining to the action for the balance of accounts, from the date on which the latter was acknowledged by agreement of the parties interested.

ART. 1973. Prescription of actions is interrupted by their institution before the courts, by extrajudicial claim of the creditor, and by any act of acknowledgment of the debt by the debtor.

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ART. 1974. Interruption of prescription of actions in joint obligations equally benefits or injures all the creditors or debtors.

This provision is likewise applicable with regard to the heirs of the debtor in all kinds of obligations.

In obligations in common, when the creditor does not claim from one of the debtors more than the part pertaining to him, the prescription is not interrupted for that reason with regard to the other codebtors.

ART. 1975. Interruption of the prescription against the principal debtor by suit for debt shall also lie against his surety; but that arising from extrajudicial claims of the creditor or private acknowledgments of the debtor shall not prejudice said surety.

FINAL PROVISIONS.

ART. 1976. All legal compilations, uses, and customs which constitute the common civil law in all matters which are the object of this code are hereby repealed, and shall remain without force or effect either as direct obligatory laws or as supplementary law. This provision is not applicable to the laws which have been declared in force by this code.

TRANSITORY PROVISIONS.

Changes introduced in this code prejudicing rights acquired according to prior civil legislation shall have no retroactive effect.

In order to apply the proper legislation in the cases not expressly specified in this code the following rules shall be observed:

1. Rights arising under the legislation prior to this code, out of matters carried out under its rules, shall be governed by said prior legislation, even if the code should regulate them in another manner, or does not recognize the same. But if said right is declared for the first time in this code, it shall be effective at once, even when the act which gave rise thereto may have taken place under the prior legislation, provided it does not prejudice other acquired rights having the same origin.

2. Acts and contracts executed under the existing prior legislation, and which are valid according to the same, shall produce all their effects in accordance therewith, with the limitations established in these rules. Therefore wills, even when joint; powers of attorney to make wills and codicils which may have been executed or written before this code became operative, shall be valid; and the clause *ad cautelam*, the trusts to apply the property in accordance with the private instructions of the testator, and any other acts permitted by prior legislation, shall be valid; but the revocation or modification of these acts or of any of the clauses contained in the same can not take place after this code has become operative except by making the will in accordance with the same.

3. The provisions of this code which sanction, with a civil penalty or deprivation of rights, acts or omissions which had no sanction in prior laws are not applicable to the person who, when the latter were

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in force, should have made the omission or committed the act forbidden by this code.

When the fault may also be punished by prior legislation the mildest provision shall be applied.

4. Actions and rights arising before this code became operative, and not exercised, shall continue with the extension and according to the terms recognized by prior legislation, but shall be subject, with regard to the exercise, duration, and proceedings for enforcing them, to the provisions of this code.

If the exercise of the right or of the action should depend on official proceedings begun under prior legislation, and they should be different from those established in this code, the persons interested may choose either one or the other.

5. Children who have attained the age of 23 years when this code goes into operation are emancipated and not subject to the parental authority, but should they continue to live in the house and at the expense of their parents the latter may retain the usufruct, the administration, and other rights which they may be enjoying in the private property of their children up to the time when the children should be freed from the parental authority according to prior legislation.

6. A father who may have voluntarily emancipated a child, reserving to himself some rights out of his adventitious property, may continue enjoying the same until the time when the son may be freed from the parental authority according to prior legislation.

7. Fathers, mothers, and grandparents who are exercising guardianship of their descendants, can not withdraw the sureties they may have constituted, nor be obliged to constitute them should said sureties not have been given, nor to complete the same should those given be insufficient.

8. Guardians and curators designated under the provisions of prior legislation and subject to the same shall preserve their charges, but subject with regard to their exercise to the provisions of this code.

This rule is also applicable to the possessors, and temporary administrators of the property of other persons, in the cases in which the law establishes the same.

9. Guardianships and curatorships, the definite constitution of which may be pending the decision of the courts at the time this code goes into operation, shall be constituted according to prior legislation, without prejudice to the preceding rule.

10. Municipal judges and *fiscales* shall not proceed to name family councils, ex officio, except with regard to minors whose guardianship may not be definitely constituted when this code becomes operative. If the guardian or curator should already have begun to exercise his charge, the family council shall not be named until one of the persons who has to form a part of the same, or the same guardian or curator existing, requests the constitution of said council, in the meantime the appointment of a protutor being suspended.

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11. Proceedings for adoption, those for voluntary emancipation, those for dispensation of law, pending before the government or the courts, shall be continued in accordance with prior legislation, unless the parents or petitioners for such grace should discontinue said proceedings and prefer those established in this code.

12. Rights to the inheritance of a person who may have died, with or without a will, before this code was in force, shall be governed by prior legislation. The inheritance of those who die after that time, with or without a will, shall be awarded and divided according to this code, but complying, in so far as the latter permits it, with the testamentary provisions. Therefore legal portions, betterments, and legacies shall be respected; but their amounts shall be reduced when it is not possible in any other manner to give to each participant in the inheritance the share pertaining to him, according to this code.

13. Cases not directly included in the foregoing provisions shall be determined by applying the principles on which they may be based.

ADDITIONAL PROVISIONS.

1. The presiding judge of the supreme court and those of the territorial audiencias shall forward to the Department of Grace and Justice at the end of each year a report in which, referring to the affairs of which the civil branches may have taken cognizance during the same year, they may point out the deficiencies and doubts that may have arisen in applying this code. They shall state in detail therein the questions and points of law controverted and the articles or omissions of the code which have given rise to doubts of the court.

2. The Secretary of Grace and Justice shall forward these reports and a copy of the civil statistics of the same year to the general codification commission.

3. In view of this data, of the progress made in other countries, which may be utilized in our country, and of the jurisprudence of the supreme court, the codification commission shall draft and forward to the government every ten years the reforms it may be advisable to introduce.

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APPENDICES.

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APPENDIX I.

Requisites or formalities necessary before consent by the family council to contract marriage may be given. (*See article 46 of the code.*)

The following requisites shall be necessary when, according to the provisions of article 46 of the civil code, the family council has to give its consent to a minor to contract marriage:

1. The person wishing to contract marriage must prove, by documents or by means of testimony of witnesses to the judge of his domicile: That he has neither a father nor a mother, paternal nor maternal grandparents, or that they are legally or physically incapacitated to give their consent; that the residence of said parents or grandparents is unknown; or, finally, that they are in countries so remote that it would take several months to communicate with them.

2. The proceedings shall then be forwarded to the department of public prosecution in order that within the period of three days the latter may state if it considers them complete or suggest the proceedings which, in its opinion, should be had.

3. After the proceedings have been returned by the department of public prosecution and completed, if proper, the judge shall issue an order calling the family council, which shall proceed in the manner prescribed in articles 304 et seq. of the civil code.

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APPENDIX II.

Record of canonical marriages in the civil registry. (*See article 88 of the code.*)

INSTRUCTIONS.

For the execution of articles 77, 78, 79, and 82 of the civil code, with regard to the recording of canonical marriages in the civil registry, and of the decrees of annullment or of divorce of the same.

ARTICLE. 1. The record of canonical marriages shall be made in the office of the civil registry under the jurisdiction of which is situated the parish whose rector has himself, or through a delegate, celebrated the marriage.

ART. 2. A marriage *in articula mortis* contracted by military men in the field far from the Spanish territory, or those contracted on the high seas, shall be recorded in the office of the registry in the jurisdiction of which the husband is known to have his domicile, or in default thereof, that of the wife. Should neither of them have any known domicile, the marriage shall be recorded in the office of the general direction.

ART. 3. The officials in charge of this office shall draft these entries in accordance with the formalities established by the law of the civil registry and these instructions, without being permitted to postpone or refuse the recording of canonical marriages or the transcription of the marriage certificate, in a proper case.

ART. 4. Those in charge of the registry shall keep in packages, and in the manner prescribed in articles 28 and 29 of the regulations of the civil registry, all the instruments, communications, and documents relating to canonical marriages, the celebration of which may have been communicated to them in due form, or the certificates of which may have been copied.

ART. 5. In order to comply with the provisions of article 77 of the civil code, the contracting parties shall advise the municipal judge, at least twenty-four hours in advance, of the day, hour, and place where the canonical marriage is to be celebrated. This notification shall be written on common paper, signed by the contracting parties, and should they or one of them not be able to do so by a neighbor at his or their request, and it shall be drafted in the terms specified in Form A. The written notification may be presented by the contracting parties, by either of them or by their respective agents, even though the authorization be verbal.

ART. 6. The municipal judge or he who performs the duties of the same, shall deliver the proper receipt to the person presenting the notification, and should he not do so he shall incur a fine of not more than 100 pesetas nor less than 20. (See Form B.) He shall at the same time designate the official who, as his delegate, is to be present at the celebration of the marriage, should he for any reason whatsoever not be able to perform this duty, and shall communicate it in due time to the person designated so that he may attend.

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ART. 7. The municipal judge may delegate the following persons to discharge his duty of attending the celebration of a marriage: Those who by reason of their office legally substitute him in case of vacancy, absence, or incapacity; the municipal fiscal; the secretary of the court and his substitute; a notary of the judicial district; the mayor of the ward within the limits of which the marriage is to take place, or any other person who merits the confidence of the municipal judge.

ART. 8. After the notification to the municipal judge has been acknowledged by the presentation of the receipt, his nonattendance nor that of his delegate shall be no obstacle to the celebration of the canonical marriage and to the transcription of the marriage certificate according to the provisions of article 77 of the civil code.

ART. 9. After the celebration of the marriage has been concluded, the municipal judge shall make the proper memorandum in the respective book of the registry, should he have the same with him, and otherwise, on a piece of white paper, on which he shall state the following circumstances, in view of the data which the contracting parties must previously submit to him:

1. The place, day, hour, month, and year on which the marriage has taken place.
2. The name, surname, and ecclesiastical rank of the priest celebrating the marriage.
3. The names, paternal and maternal surnames, nativity, profession or trade, and domicile of the contracting parties.
4. The names, paternal and maternal surnames, and nativity of the parents, stating if the contracting parties are legitimate or natural children.
5. The names, surnames, and residence of the witnesses.

Mention shall also be made, if known, first, of the name and surnames, status, nativity, and profession of the proxy, if the marriage is to be thus contracted, and the date, place, and notary before whom the power was executed; second, the date of the permission or request for advice required by the civil code when proper; and, third, if one of the contracting parties is widowed, the name and surname of the deceased spouse, as well as the date and place of death.

The memorandum shall be signed by the contracting parties and by the witnesses, and for a person who can not do so, by another at his request, and by the municipal judge. (See Form C.)

ART. 10. In addition to the circumstances enumerated in the preceding article there may be included in the memorandum, should the contracting parties request it, those mentioned in Nos. 1, 9, and 10, of article 67, of the law of the civil registry, the declaration of the contracting parties being sufficient, with the exception of what is expressed in No. 9, which must be proved by the instruments required by the law of the registry and its regulations. The municipal judges shall apply to this kind of records the provisions of No. 4, of article 20, of the law of the registry.

ART. 11. If a delegate of the municipal judge should have attended the celebration of the marriage, said official must draft, after the ceremony, the proper memorandum on a sheet of common paper which may be printed, and state in the same all the circumstances mentioned in the two preceding articles. (See form D.)

ART. 12. The official who may have attended the celebration of the marriage as a delegate shall forward the memorandum referred to in the preceding article, within the next twenty-four hours, to the office of the civil registry.

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ART. 13. The memorandum drafted on common paper by the municipal judge, should he have attended the celebration of the marriage, as well as the one drawn up by the delegate, if the latter should have represented the former in this ceremony, shall be literally copied into the proper book, stating in the entry the date of the same, the number of the bundle in which the original has been filed, and the name of the municipal judge and that of the secretary, who shall authenticate the entry referred to, with their signatures and the seal of the court. (See Form E.)

At the time of copying the memoranda the municipal judge may add the circumstances mentioned in article 10, in the terms therein stated.

ART. 14. At the foot of the memoranda, when recorded, the following note shall be stamped: This memorandum is recorded in liber ———, folio ———, number ———, of the section of marriages of this civil registry. (Date and signature of the judge, and of the secretary, and seal of the court.)

ART. 15. The certificates of canonical marriages, celebrated without the attendance of the municipal judge or his delegate, shall be literally copied in the civil registry. The record may be requested by the contracting parties, their parents, or any other person interested, in person or through an agent, even though the mandate be verbal. The municipal judge shall order that the record of the certificate of marriage take place immediately, stating if the contracting parties have given or not the proper notification to the court in order to exact the proper liability, and for the purposes of the third and fourth paragraphs of article 77 of the civil code.

In this record there shall be stated: 1, the place, hour, day, month, and year it takes place; and 2, the name and surname of the official in charge of the registry, as well as those of the secretary. In this record there may also be stated, even though not appearing in the marriage certificate, should the interested parties request it, the circumstances mentioned in Nos. 1, 9, and 10 of articles 67 of the law on the civil registry, in the manner prescribed in article 8 of these instructions. (See form F.)

ART. 16. At the foot of the marriage certificate which is to be filed there shall be placed a note in the following form: "This certificate is recorded in the civil registry under my charge, liber ———, folio ———, number ———, of the section of marriages." (Date and signatures of the judge and of the secretary, and seal.)

ART. 17. The record of a marriage *in articulo mortis* may be requested when the competent official of the State did not attend its celebration, by either of the spouses, their parents, or persons interested in them, or the proxy even though the mandate may have been verbal, presenting the proper certificate of marriage. The record shall contain, in addition to all the circumstances referred to in article 15, the date of the presentation of the certificate in the registry.

ART. 18. The official in charge of the civil registry shall enter, at the instance of any legitimate party, the final judgments by which the ecclesiastical courts may have declared the annulment or divorce in canonical marriages, also making the marginal notes of reference in the proper records.

ART. 19. The doubts arising from the fulfillment of articles 77, 78, 79, and 82 of the civil code, in so far as they refer to the entry of canonical marriages and of the provisions included in these instructions, shall be submitted by the municipal judges in a clear and precise communication to the proper judges of first instance. Should the latter in their

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turn be in doubt, they shall forward the proper consultation to the general direction of civil property and notarial registries.

In no case can the record or transcription of a marriage be suspended by reason of the doubts with regard to which the judges should think it necessary to consult.

The decisions which the general direction may render on the doubts submitted by the judges of first instance shall be published in the *Gaceta de Madrid*, always omitting the name of the interested party.

MADRID, *April 26, 1889.*

Approved.

CANALEJAS Y MÉNDEZ.

FORM A.

Written declaration of those about to contract a canonical marriage.

(Article 5.)

To his honor the municipal judge of ——— ———:

Mr. ——— ———, a native of ——— ———, municipal district of ———, province of ———, ——— years of age, single, (profession or trade,) domiciled in this city, street of ———, number ———, son of Mr. ——— ———, and Mrs. ——— ———

And Miss (or Mrs.) ——— ———, a native of ———, municipal district of ———, province of ———, ——— years of age, single, (profession or trade,) domiciled in ——— street, of ———, number ———, daughter of Mr. ——— ——— and Mrs. ——— ———, have agreed to celebrate a canonical marriage before the parochial priest of the church of ———, of this district, at 8 o'clock in the morning, the ——— instant, at the chapel altar, of ———, of the same church (or at the domicile of ——— street, number ———), and in compliance with the provisions of article 77 of the civil code, inform your honor thereof, for the purposes mentioned therein.

Madrid, ———, the ———, 189——.

FORM B.

Receipt of the notification or written statement.

I, the undersigned, municipal judge of ——— ———, hereby certify that to-day, at ——— o'clock in the morning, Mr. ——— presented a written statement in which he notifies this court that on ———, at ——— o'clock, the celebration of his marriage with Miss (or Mrs.) ——— ———, at the parochial church of ———, will take place.

In witness whereof I issue these presents, which I sign on the ——— ———.

FORM C.

Memorandum of entry of a canonical marriage which the municipal judge attends.

[Article 9.]

In the city of ——, on ———, 189——, I, the undersigned ——— ———, municipal judge for the district of ——, being in the church of San Juan of this city, where I came in order to attend the celebration of the canonical marriage agreed upon between Mr. ——— ———, and Miss (or Mrs.) ——— ———, in virtue of the previous notification received by me in due form from the same, declare: That in my presence ———,

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parochial priest of the said church, proceeded to unite in canonical marriage the above-mentioned Mr. ——— ———, ——— years of age, single, a native of———, resident of———, legitimate son of—— Mr. ——— and Mrs. ——— ———; and Miss (or Mrs.) ———, ——— years of age, a native of———, and resident of———, legitimate daughter of Mr. ——— ——— and Mrs. ——— ———, there having also attended this ceremony the father and mother of the groom and bride, and the witnesses, Mr. ——— ———, ——— of age, citizen of———, and Mr. ——— ———.

In witness whereof I draft this memorandum of record of the above-mentioned marriage for the purposes of article 77 of the civil code, which is signed with me by the contracting parties and by the witnesses after being informed of its contents.

Remarks for drafting the memorandum.

1. In case either of the contracting parties should not be a legitimate child it shall be stated in the special place indicated in the memorandum that he or she is illegitimate, stating whether natural or a foundling, without stating in other cases any other kind of illegitimacy.
2. When either of the contracting parties is represented by a proxy, mention shall be made of the power of attorney in which the representation has been granted as well as the name and surname, age, nativity, domicile, profession, or trade of the proxy.
3. Should the contracting parties state that they have natural children which are to be legitimized by the marriage, this statement and the names of the children shall be entered.
4. When one of the contracting parties is widowed, the name and surname of the deceased spouse shall be entered in the memorandum, as well as the date and place of death, and the civil or parochial registry in which it may have been recorded.
5. In the memorandum there shall be stated the date of the permission or request for advice required by the civil code, when proper.
6. Should those who are to give their consent or advice for the marriage attend the same, and should state their consent in the memorandum, they shall sign the same in person or request another to do so in their stead, should they not be able or not know how to sign.
7. Should special cases occur, unforeseen in these remarks, the municipal judges shall observe, in order to decide and record them in the memorandum, when proper, the legal provisions referring thereto.

FORM D.

Memorandum of record of a canonical marriage which the delegate of the municipal judge attends.

(Article 11.)

In the village of———, municipal district of——— ———, on———, 189——, I, the undersignd, petty mayor of the said ward, being in the parochial church of San Pedro, where I came as a delegate designated by the municipal judge of the said subdistrict, in order to attend, in compliance with the provisions of article 77 of the civil code, the celebration of the marriage agreed upon between Mr. ——— ——— and Miss (or Mrs.) ——— ———; and in virtue of the order of the said judge I declare that in my presence ——— ———, parochial priest of the

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above-mentioned church, proceeded to unite in canonical marriage the said Mr. ——— ———, ——— years of age, single, a native of ———, resident of———, legitimate son of Mr. ——— ——— and Mrs. ——— ———, and Miss (or Mrs.) ——— ———, ——— years of age, a native of ——— and resident of———, legitimate daughter of Mr.——— ——— and Mrs. ——— ———, the father and mother of the groom and bride also attending said ceremony, as well as the witnesses, Mr. ——— ———, ——— of age, a resident of ———, and Mr. ——— ———.

In witness whereof I draft this memorandum of record of the said marriage, which shall be immediately entered in the section of mar riages of the civil registry of the municipal court for the purposes of article 77 of the civil code, being signed by myself, the contracting parties, the parents, and the witnesses present at this ceremony after its contents have been made known to them, to which I certify.

FORM E.

Copy of the memorandum drafted on common paper regarding a canonical marriage which the municipal judge or his delegate attended.

(Article 13.)

In the city, village, or locality of ———, on this date, is being entered the canonical marriage to which the memorandum refers and which is literally as follows:

[Copy in full.]

The copied memorandum is deposited in this civil registry in package No. ——— of the section of marriages.

[Date and signature.]

FORM F.

Transcription of the certificate of a canonical marriage which neither the judge nor his delegate attended.

(Article 15.)

In the city of ———, before ———, municipal judge, and ——— ———, secretary, appeared Mr. ——— ———, and stated that in the name of ——— he presented the certificate of the canonical marriage that was celebrated on ——— of the month of ———, 18——, between Mr. ——— ——— and Miss (or Mrs.) ——— ———, before the parochial priest of the church of ———, which neither the municipal judge nor his delegate attended, in order that the said certificate be entered in this registry in compliance with the provisions of article 77 of the civil code. In view thereof, and it appearing that the contracting parties gave (or did not give) timely notice of the celebration of the canonical marriage, the judge ordered that the record of the canonical certificate of the above-mentioned marriage be made. In consequence thereof the above certificate is copied literally, as follows:

[Here the certificate.]

The foregoing certificate is deposited in this registry in package No. ——— of the section of marriages.

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APPENDIX III.

Before whom and how opposition to marriage shall be made.

(See articles 97 et seq. of the code.)

From the context of the provisions of the code in article 97 et seq., and in connection with the existing additional laws, may be deduced the rules relating to the proceedings and competency of the matter referred to in the title of this appendix and which may be summed up as follows:

1. The judge competent to take cognizance of the opposition to the marriage is the judge of first instance under whose jurisdiction is the municipal district within which it is to be celebrated.

2. In the objection made to the municipal judge, in addition to the ordinary requisites, there shall be clearly stated the reasons for the opposition and the qualification giving the objecting party the right to make it.

3. The judge receiving it shall deliver the ratification to the objecting party and communicate the same to the department of public prosecution within the term of three days.

4. Should the latter find a legal foundation it shall request that, with the suspension of the celebration of the proposed marriage, the objection be transmitted to the judge of first instance, in order that he may draft the opposition in the form provided by article 524 of the law of civil procedure.

5. The party interested in the noncelebration of the marriage, instead of the objection, may make the opposition in person within the fifteen following days to the judge of first instance, who, if the objection has the legal requisites, shall have immediately a written order issued to the municipal judge in order that he suspend the celebration of the marriage until the certification of the judgment or final decision terminating the proceedings be delivered to him.

6. The municipal judge shall give notice of the mandate suspending the celebration of the marriage to those intending to contract it and to their parents or guardians, if they be under 23 years of age.

7. At the time of the notice or within the following twenty-four hours the interested parties or any of them may state that they desist from celebrating the marriage, in which case the proceedings shall be transmitted to the judge of first instance, who shall decree their termination and officially award the costs.

8. The department of public prosecution shall be heard in these proceedings when it has not itself instituted the opposition by virtue of the provisions of article 98 of the civil code.

9. From the decision of the judge of first instance appeal can only be made to the territorial audiencia.

10. Should the objection be dismissed and the interested parties demand indemnity for losses and damages, the proceedings shall follow the provisions of articles 928 et seq. of the law of civil procedure.

11. Should the judge or court consider the objection malicious, he shall reserve to those injured the right to bring the proper civil or criminal action, transmitting the decrees to the department of public prosecution in order that the criminal action may be instituted, if proper.

12. All the time fixed for the prosecution of these proceedings can not be extended and can not be suspended for any reason whatsoever. Moreover, there shall be applied thereto the rules governing urgent business.

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APPENDIX IV.

Preliminary proceedings in trials for divorce or annulment of civil marriages.

(See article 107 of the code.)

There being no special precept in our law of procedure in force that may be applied to the subject in question, it seems opportune to give a few suggestions in order that the reader may know the thought and point of view of the illustrious jurists and the most honorable officials of the judicial department, and which may serve as a guide in the cases in which nothing has been provided for in the substantive law.

These suggestions are the following:

1. The spouse who intends to institute the proper action shall present to the competent court of first instance a document containing a summary statement of the facts and claims he proposes to sustain, accompanied by documents in support thereof; should he have none, a preliminary investigation shall take place with the participation of the department of public prosecution, in order to corroborate the same.

2. The judge shall render a decision granting the ratification, which shall be done immediately; and should the plaintiff not be able to appear in person, the judge shall go to his domicile or address the proper letters rogatory when the latter resides in another judicial district.

3. Before delivering the writ of ratification, the judge shall make the proper observations to the plaintiff, informing him of the importance of the suit he is beginning and of the consequences it may produce in the family.

If, notwithstanding this, the plaintiff should persist, a decision shall issue citing the two spouses to appear on the day and hour appointed.

4. Should the plaintiff, without alleging a legal excuse, not appear before the court, he shall be considered as having abandoned the suit, and the costs shall be charged to him; should the defendant not appear, he shall incur a fine of 10 to 100 pesetas and the payment of the costs caused thereby, and a second citation shall be sent him, with the warning that proper procedure will be taken against him, should he persist in his contempt.

5. The appearance shall take place without the presence of next friends or defenders, and should reconciliation be impossible the judge shall issue an order authorizing the party instituting the proceedings to make his complaint in accordance with law within the term of thirty days, otherwise being barred.

6. In the same decree he shall order the steps taken indicated in article 68 of the civil code, and if the reasons for divorce are based on one or more of causes 1, 2, 3, and 6 of article 105 of the civil code the parents shall provide by mutual agreement for the care and education of the children.

7. At the instance of any of the parties, and at their expense, reconciliation may be attempted during the course of this kind of actions.

8. Notwithstanding the provisions of the preceding rules, when in compliance with the provisions of article 102 of the civil code, the action for annulment of marriage may be instituted not only by the spouses, but by the department of public prosecution or by any of the persons interested therein, the complaint shall be presented immediately,

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together with the necessary documents, and an attempt at reconciliation shall not take place; but in the order admitting it there shall be adopted the measures indicated in said article 68.

9. It is likewise not necessary to attempt reconciliation when the residence of the defendant is unknown, or when the latter is in a foreign country, or there be any other obstacle difficult to overcome and for which the plaintiff is not responsible.

10. The department of public prosecution shall always be a party to suits of this kind, and if it should not have begun the suit it shall be heard last. At its instance, should it appear that the plaintiff is also culpable or is guilty of any of the causes which give rise to a divorce, in case a countercharge is made by the defendant, it may be declared, without further proceedings, that neither has the right to continue the suit.

11. Nevertheless, in one of the cases mentioned in the second paragraph of article 74 of the civil code the suit instituted by the department of public prosecution shall be continued.

12. The spouses, whether minors or of age, shall appear in person and without the attendance of their parents or legal representatives unless they are otherwise incapacitated.

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APPENDIX V.

Rules containing the modifications which may be considered indispensable in proceedings relating to guardianship in accordance with the provisions of the code. (*Articles 203, 206, 214 et seq., 222, and 228.*)

The following are the general indications that may be made:

1. The municipal judge of the place, in the case foreseen in article 203 of the civil code, shall officially make an order which shall head the papers in the proceedings, naming, on his responsibility, a defender having all the conditions required for the duties of a judicial manager, taking care of the person and property of the minor, informing the department of public prosecution and the person designated of the decree.

2. Should the said department make opposition to the memorandum of notification, what may be proper shall be clearly decided.

3. The charge once accepted by the person designated, he shall immediately enter upon his duties, and shall bear all the obligations of the guardian.

4. As soon as the guardian is appointed the defender shall cease to be such and shall render account to the former.

5. These provisions are applicable in all cases where the minor or incapacitated person has no legal representative according to law.

The following rules may be applied to testamentary guardians:

That the appointments made by the mother or a stranger, in the conditions determined in paragraph second of articles 206 and 207 of the civil code, shall not be ratified without a certification of the agreement of the family council, expressing the necessary approval and acceptance.

In regard to legal guardians the following rules may be established:

1. Should no guardian have been named by the father, mother, or any other person, designating a minor as an heir, or has left him an important legacy, the judge shall designate for this charge the relative upon whom this is incumbent, according to the provisions of article 211 of the civil code.

2. When the relative upon whom the guardianship is incumbent is not well known, the judge shall make investigations concerning him through the civil and ecclesiastical authorities, and the appointment shall be made according to the same.

3. Should any one of these have any known incapacity, this shall be stated, and the appointment of his successor shall then be made.

4. Should there be objection to the appointment, it shall be discussed and decided by judicial procedure between him who institutes the same and the appointed guardian, the interests of the minor being represented by the department of public prosecution.

5. During the prosecution of the suit the guardian elect, who shall act as the defendant, shall have the custody of the minor and the management of his property, giving a guaranty that may appear sufficient to the judge.

6. Should the guardian elect refuse to accept the charge, the department of public prosecution shall be heard, and should the latter consent the judge shall appoint another guardian.

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7. Should the department of public prosecution not consent, the opposition shall be discussed and decided in interlocutory procedure, observing the provisions of rule 5.

8. After the acceptance of the person designated, and his giving security in a proper case, he shall be appointed to the office.

The following rules may be established for the appointment of guardians of incapacitated persons:

1. When a judicial authority or a police agent has knowledge of the existence of an insane or deaf and dumb orphan, having no person appointed by law to take care of and defend him, he shall notify the competent judge and the latter shall officially proceed to institute proceedings of provisional incapacity.

2. In this procedure there shall be observed the provisions of articles 214 and 220, both inclusive, of the civil code.

3. The rules established in the law of civil procedure for the adoption of urgent measures, in so far as not modified by the civil code, shall be observed in the proof.

The two following rules shall be observed for the appointment of a guardian for prodigals:

1. The declaration of prodigality shall be instituted by means of a complaint with the requisites mentioned in article 524 of the law of civil procedure, presented by one of the persons authorized therefor, according to article 222 of the civil code.

2. The declaration requested having been obtained by final judgment after proceedings as in declaratory suits involving a large amount, in which the necessary urgent measures may be adopted, subject to summary proceedings, the literal certificate of the same shall be taken to head the papers in the case, and a guardian for the property shall be immediately appointed.

Lastly, in regard to the appointment of guardians for those under civil interdiction the following shall be observed:

1. That in the case provided for in article 228 of the civil code the department of public prosecution shall request that the certificate of the paper heading the proceedings, and that part of the final judgment decreeing the penalty of interdiction that may have been imposed, shall serve as the heading to the papers of the proceedings demanding the appointment of the guardian.

2. That should the appointment of a guardian be requested by any of the persons having such a right, at the end of the document a mandate shall be made annexing the aforesaid certificate, which mandate shall be requested of the judge, or court before whom the execution of the judgment rendered in the criminal cause may be pending.

3. That although the case has not been instituted by the department of public prosecution, the latter should be a party to the same.

4. That the proceedings shall in other matters be governed by the modifications established by the civil code.

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APPENDIX VI.

Alienation, encumbrance, etc., of property of minors. (*Articles 269 and 903.*)

Although in the note to article 903 of the code some indications and references are made as to the proceedings for the alienation, encumbrance, and compromises involving property of minors, etc., they must be completed by others, which we consider useful, for the resolution of the difficulties that may arise necessarily on this point, in the application of the new provisions of our civil law, to cases occurring in practice. These indications are the following:

1. In cases mentioned in No. 5 of article 269 of the civil code, the guardian shall solicit of the president of the family council, or in his absence of the municipal judge, to convoke said council in order that it may give the necessary authorization.

2. The council, in view of the documents presented by the soliciting party or of the report given, shall concede or refuse the authorization without further appeal, and may establish the rules to which the alienation or encumbrance shall be subject.

3. In all cases the guardian shall be assisted by the secretary, acting as such in the family council, and the price for the sale shall be that of the appraisement made when the inventory was drawn up.

4. When the sale, by resolution of the family council or in compliance with the law, has to take place by public auction the secretary shall issue a notice in which shall be given the place, day, and hour of the sale, the name of the officer before whom it shall be held, as well as the names of the guardian and the minor, the description of the property about to be sold, with the data required in summary proceedings, if it consists of real property, and should it be personal the indication of its kind and quality shall be sufficient. Copies of the notice shall be affixed in proper places, in order that the sale may have greater publicity, advertising it in the local paper that has the largest circulation, and, should it be necessary, in the "Boletin Oficial" of the province.

5. In the public sale the guardian and officer shall observe the provisions of section second, title XV of book second of the law of civil procedure.

6. A bid that does not cover the amount of value fixed for the property shall not be admitted.

7. No admissible bid having been made, the guardian may make before the family council one of the following propositions:

a. That he may be considered as relieved from duty and be substituted in the case.

b. That a second public sale be announced with a reduction of 20 per cent of the price.

8. The second public sale shall take place with the same formalities as the first.

9. When the sale is made for the payment of debts or any other necessity, at the request of the guardian, a third auction may take place with a reduction of another 20 per cent from the price set for the second.

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10. Should, even then, no admissible bid be made, the representative of the minor may be authorized to privately sell for the price fixed for the third auction.

11. The sale once made, the family council shall see that the price obtained is applied as indicated in the request for authorization.

12. The price shall be delivered, while the proper application is made to the guardian, if he is exempted from giving security, or if the one given by him is sufficient to insure the same. Otherwise, it will be deposited in a public institution in which the judicial deposits may be made.

13. The authorization for compromises of the rights of the minors and incapacitated persons shall be solicited by the same persons as may request the sale of property. In the document in which the authorization is solicited must be expressed the reason and object of the compromise, the doubts and difficulties of the business, and the reasons for considering the same as useful and convenient, and the document shall be accompanied by the one in which the basis of the compromise is stated. With the document shall also be delivered those necessary to form an exact judgment on the subject, together with the necessary data.

14. The family council, in view of the opinion of the guardian and hearing one or more lawyers strangers to the suit or business in question, should it be deemed necessary, shall concede or refuse the authorization requested.

15. When it is conceded it shall be expressed in the memorandum, and with the certification thereof the guardian shall apply to the judge or court, should the suit be pending, in order that it may be given effect.

16. The same formalities as those established for the sale, without necessity of public bids, shall be observed for the mortgaging or encumbering of real property, or for the extinction of real rights pertaining to minors or incapacitated persons.

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APPENDIX VII.

Method of procedure of the family council (article 304, et seq.).

From the character of the institution, as well as from the provisions of the civil code, the following method of procedure may be established for family councils:

1. The council shall meet by virtue of a summons issued in a decision, which heads the papers of the proceeding and which shall be issued ex officio by the municipal judge or at the request of the department of public prosecution, in cases in which the latter must participate according to the code or the law on civil procedure, and in which shall be designated the persons that are to take part.

2. The summons shall be made by the secretary or a subaltern officer of the court in the form provided for oral trials; but should any of the members reside outside the seat of the municipal district, or in another municipal district, he shall be notified directly by means of a registered letter, or through the respective petty mayor.

3. The questions arising from the constitution of the family council, the excuses or better right to form part of the same, shall follow the proceedings for urgent measures, and shall be decided by the municipal judge according to the documents accompanying the claim.

4. The decision of the municipal judge may be appealed from for review only, to the judge of first instance, who shall decide the same, without any further appeal, by the same proceedings as those established for oral trials.

5. Should the family council not find any urgent measures to deliberate upon, its meeting shall be postponed until the appeal has been decided.

6. The family council having been constituted for the first time, for the next sessions it shall be convoked by the president, who may make use therefor of the subaltern officers of the municipal court or of the petty mayors; the municipal judge shall cure the defects of the summons, and shall do it whenever for some cause or other the personnel of the family council is renewed.

7. Each deliberation and decision of the family council shall be contained in a memorandum drawn up by the secretary of the municipal court, the secretary of the municipal council, their substitutes, or a notary to be selected by the family council, and shall state:

(*a*) The date and place of the meeting and the authority that has ordered the same.

(*b*) The names and surnames of those summoned, stating those who were present.

(*c*) The subject of the meeting and the summary statement of the deliberations.

(*d*) The other statements required by law, and especially the vote given by each member when the decision has not been adopted unanimously.

In order that a decision be adopted, there must be at least two favorable votes.

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8. The memorandum shall be signed by all those present, and shall be filed, at the disposition of the family council, in the municipal court or some other public depositary, until it is delivered to the minor after his having reached majority; those referring to the same, shall be affixed one to the other, and shall have the same validity as the other judicial documents.

9. Should the guardian, or in his absence, the protutor, not be present at the deliberations of the family council, he shall be notified of the decision, together with a copy of the proceedings, to enable him to fully execute the same.

10. When the decision of the family council is not final without the approbation of the judicial authority, the guardian or protutor shall fully present it to the same within the fifteen days of its adoption, should there be no other term established in the same.

11. Should the guardian not fulfill this obligation any of those forming part of the council or the department of public prosecution shall take his place; the expenses, however, shall be imposed personally upon the negligent party.

12. The appeal presented before the judge of first instance, referred to in article 310 of the civil code, and the approval of the decision necessary in a proper case, shall follow the same procedure of oral trials; the same to be confirmed before the municipal judge within the fifteen following days.

13. When the decision that has been appealed from is not final without judicial approval, the same shall be given or refused in the same decision which is rendered on the appeal.

14. When, in the judicial guardianship proceedings, the absence of a relative in the required degree for conferring upon him the legitimate guardianship has been proved, the family council shall meet and appoint for this duty a person worthy of its confidence.

15. The appointment shall be communicated by means of a certificate signed by the secretary and countersigned by the president, to the court of the first instance, which, after the acceptance of the person designated and his giving security, shall appoint him as guardian.

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TRANSLATION.

ADAPTATION

OF THE

ELECTORAL LAW OF JUNE 26, 1890,

TO THE

ISLANDS OF CUBA AND PORTO RICO.

DIVISION OF CUSTOMS AND INSULAR AFFAIRS.
WAR DEPARTMENT.
August, 1899.

WASHINGTON:
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ROYAL DECREE.

In accordance with the opinion of my council of secretaries and by virtue of the authority granted my Government by article 89 of the constitution of the monarchy:

In the name of my august son the King, Don Alfonso XIII, and as Queen Regent of the Realm,

I decree the following:

ARTICLE 1. The electoral law of June 26, 1890, shall be promulgated and enforced in the islands of Cuba and Porto Rico, with the modifications which, in order to adapt it to the conditions of those territories, have been introduced in the text which is published immediately after this decree.

ART. 2. The colonial department shall issue the regulations and other necessary provisions for the execution of this decree, of which the Government shall inform the Cortes.

Given at the Palace November twenty-fifth, one thousand eight hundred and ninety-seven.

MARIA CRISTINA.

PRAXEDES MATEO SAGASTA,
President of the Council of Secretaries.

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ADAPTATION OF THE ELECTORAL LAW OF JUNE 26, 1890, TO THE ISLANDS OF CUBA AND PORTO RICO.

TITLE FIRST.

GENERAL PROVISIONS FOR ELECTIONS.

CHAPTER I.—*The electoral franchise.*

ARTICLE 1. All male Spaniards over twenty-five years of age who are in the full enjoyment of their civil rights and are residents of a municipality in which they have resided at least two years, are electors in the islands of Cuba and Porto Rico.

Noncommissioned officers and privates of the navy or army can not cast votes while they are serving in the ranks.

The same suspension is established with regard to those who are in similar circumstances in other corps or armed institutions under the orders of the State, province, or municipality.

ART. 2. The following can not be electors:

1. Those who have been sentenced by a final sentence to perpetual loss of political rights and disqualification for public offices, notwithstanding that they have been pardoned, unless they have previously obtained their personal rehabilitation by means of a law.

2. Those who, by a final sentence, have been condemned to a corporeal penalty, if they have not obtained the rehabilitation at least two years before their inscription in the census.

3. Those who, having been condemned to other penalties by means of a final sentence, do not prove that they have fulfilled the same.

4. Bankrupts or insolvents not discharged in accordance to law and who do not prove by means of documents that they have liquidated their obligations.

5. Debtors to public funds as taxpayers.

6. Persons being taken care of in charitable institutions or who, at their own request, have been administratively authorized to beg public charity.

CHAPTER II.—*The electoral census.*

ART. 3. In order to exercise the electoral franchise it is necessary to be inscribed in the electoral census, which is the register containing the name and paternal and maternal surnames, if there should be any, of the Spanish citizens qualified as electors.

The census is permanent and shall not be modified except by virtue of the annual revision.

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ART. 4. The formation, revision, custody, and inspection of the census shall be in charge, according to the respective powers, of the central board established by the law of June 26, 1890, of provincial boards, and of municipal boards which shall be denominated boards of the electoral census.

Provincial boards shall reside in the capitals of each province, and municipal boards in each municipality. All of them are of a permanent character.

The provincial boards shall be presided over by the associate justices of the audiencia of the respective province, who may be appointed by the presiding judge of the territorial audiencia to which it appertains, and the municipal boards shall be presided over by the judges of first instance, and in their absence by the public officials who may be selected for this purpose by the presiding judge of the audiencia of the province.

The number of members of provincial boards shall be fifteen, and in order to deliberate and adopt resolutions the concurrence of nine members shall be necessary.

The following are *ex officio* members of provincial boards:

1. The president and the vice-president of the respective deputation.
2. The senior ex-president of the same deputation who resides in the province.
3. Four taxpayers selected by lot from among those who pay the first quota by reason of land tax and are residents of the province.
4. Four taxpayers selected by lot from among those who pay the first quota by reason of industrial tax and are residents of the province.
5. Four residents of the same who prove, by means of an official diploma, their professional or academical qualifications.

The number of substitutes of the taxpayers shall be eight who pay the land tax, and eight more who pay the industrial tax, who pay the highest quotas, residing in the province; and the substitutes of the residents having an official diploma shall be the persons who possess the same qualifications required of the former. All of them shall be selected by lot.

The sortitions of taxpayers, qualified electors, and their substitutes shall take place in a public ceremony, before the audiencia of the respective province, by the presiding judge of the same.

The following are members *ex officio* of the municipal boards:

1. The mayor and the syndic of the municipal council.
2. The municipal judge and the *fiscal.*
3. The ex-mayors residing in the municipality.
4. Four highest taxpayers paying the land tax and four paying the industrial tax, also residents of the municipality.
5. Four residents of the same who prove, by means of an official diploma, their professional or academical qualifications.

The taxpayers and qualified electors shall be selected by lot by the president of the municipal board in a public session before the munici-

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pal council, in the manner prescribed for provincial boards. In the same act and in a similar manner the substitutes shall be selected.

Municipal boards can not deliberate nor adopt resolutions without the concurrence of twelve members at least.

The secretaries of the audiencias shall be the secretaries of the provincial boards, and the secretaries of the courts of first instance, those of the municipal boards, and in their absence those of the municipal courts, shall be said secretaries of the municipal boards.

The secretaries shall not have the right of speech nor of vote, and shall be assisted by the employees of the respective secretaries' offices.

For all sessions which boards are to hold, the respective president shall call the ex officio members and the number of substitutes he may consider necessary. If, notwithstanding this, a sufficient number should not assemble, the session shall be held the following day, after a call of all the substitutes who reside in the capital and with the number of those who may attend.

CHAPTER III.—*Ballots.*

ART. 5. In each electoral section there shall be a committee which shall preside over the election, composed of one president and of the supervisors appointed by the board of the census, and by the candidates who, having a right to appoint them, make use of the same.

This board shall be the provincial one when elections of deputies to the Cortes, of representatives, or of provincial deputies are in question, and the municipal board when councilors are to be elected.

ART. 6. In every call for a general or partial election one single day shall be assigned, which shall always be on Sunday, for voting.

Voting shall take place simultaneously in all the sections on the day fixed, beginning punctually at eight o'clock in the morning and continuing without interruption until four o'clock in the afternoon, at which time it shall be declared as definitely closed and the counting of votes shall begin.

ART. 7. Balloting shall be secret, on slips of paper, and shall be made in the manner prescribed by the regulations.

ART. 8. There can never in any case whatsoever be at the door of the electoral college a force from an armed institution, nor can it enter the same except on account of disturbance of the public order and when called upon by the president.

TITLE II.

Special provisions for elections.

CHAPTER I.—*Elections of senators.*

ART. 9. The Spaniards who possess the qualifications mentioned in article 22 of the Constitution of the Monarchy are eligible for senators, provided they are not included in any of the cases of disqualification or incompatibility established by the law.

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ART. 10. The elections of senators shall be made in accordance with the provisions of the laws of February 8, 1877, and January 9, 1879.

Senators, after being admitted by the Senate, represent the nation individually and collectively.

CHAPTER II.—*Elections of deputies to the Cortes.*

ART. 11. All male Spaniards who are laymen over twenty-five years of age, in the full enjoyment of all civil rights, provided they are not included in any of the cases of disqualification or incompatibility established by the law, are eligible for the office of deputies to the Cortes.

ART. 12. The deputies to the Cortes shall be elected directly by the electors of the electoral districts, subject to this law and to the regulations; but, after being appointed and admitted by the Congress, they represent the nation individually and collectively.

ART. 13. The provisions of the electoral law of the Peninsula of June 26, 1890, which refer specially to the election and the exercise of the office of deputy to the Cortes, are applicable to the deputies to the Cortes for the islands of Cuba and Porto Rico. For this purpose there are inserted as appendices to the present law the corresponding articles in the manner in which they are to be observed in connection with this law.

CHAPTER III.—*Elections of councilors of administration, representatives, provincial deputies, and councilors.*

ART. 14. Spaniards who possess the qualifications required for these offices in the constitution of the islands of Cuba and Porto Rico may be councilors of administration and representatives.

ART. 15. Spaniards who have the qualifications to be deputies to the Cortes and who are natives of the province, or who have resided four consecutive years in the same, may be provincial deputies.

ART. 16. There may be elected as councilors of municipalities having more than one hundred residents, those who besides having resided at least four years without interruption in the municipal district, pay a direct tax of those which are included in the locality, the two first thirds of the lists of taxpayers paying the land tax and the industrial and commercial subsidy; and in municipalities having less than one thousand and more than four hundred residents those who pay quotas included in the first four-fifths of the said lists. In municipalities which do not have more than four hundred residents, all the electors are eligible.

In the number of eligibles there shall furthermore be included all those who pay a quota equal to the lowest one which in each municipal district it is necessary to pay in order to be eligible, in accordance with the foregoing paragraph.

Persons who are residents, and who pay a tax, and prove by means of an official diploma their professional or academical qualifications, shall also be eligible.

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Persons who suffer a reduction in the salary they receive from the general, provincial, or municipal funds are also eligible, provided the amount of the reduction is included in the proportion previously indicated for eligibles in towns of one thousand and four hundred residents, respectively.

The quota shall be estimated by adding together those which the taxpayers pay within and without the town, by reason of a direct tax and on account of municipal surtaxes. In order to compute the assessment to electors and eligibles, there shall be considered as private property, with regard to husbands, that of their wives during the existence of the conjugal partnership; with regard to parents, that of their children which they legally administer; with regard to children, their own property, the use of which they do not enjoy, for any reason whatsoever.

ART. 17. Persons who are included in any of the cases of disqualification or incompatibility established by the respective laws can not be elected to any of the offices referred to in the three foregoing articles.

ART. 18. The electors determined by article 25 of the electoral law for senators of the Peninsula shall be the electors of councilors of administration. The provisions of Chapter IV of said law shall be applied to the formation of the lists of electors and to the election of the councilors of administration in the manner which may be determined by the regulations.

ART. 19. In districts in which a representative, a provincial deputy, or a councilor is to be elected each elector can not validly give his vote to more than one person; when more than one up to four are to be elected, he shall be entitled to vote for one less than the number of those to be elected in his respective district; for two less if more than four are to be elected, and for three less, if more than eight are to be elected.

The other provisions relating to electoral procedure shall be those determined in the respective organic laws and in the regulations.

TITLE III.

PENAL SENTENCES.

CHAPTER I.—*Crimes.*

ART. 20. A forgery committed in documents referring to the provisions of this law, in any of the forms indicated in article 310 of the penal code of Cuba and Porto Rico, constitutes the crime of forgery in electoral matters, which shall be punished with the penalties established in said article or in the following one, according to the character of the persons responsible.

Any intentional omission in the documents referred to in the foregoing article which may affect the result of the election, constitutes the same crime and shall be punished with the same penalties.

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ART. 21. The courts, however, shall reduce the penalties by one or two degrees, imposing the same in the degree they may deem proper, according to the special circumstances of the case, the scandal or alarm which they may have given rise to, and provided they were not committed in conjunction with other crimes punishable by the code.

ART. 22. For the purposes of this law the following are official documents: The census and its certified copies, the certificates of election lists, certifications, and any others which emanate from a person whom the law intrusts with their issue, be their purpose either to facilitate or to prove the right to the exercise of the electoral franchise or its result, or to guarantee the regularity of the proceedings.

ART. 23. Public functionaries who do not fully and strictly comply with the duties imposed by this law, or by the provisions which may be issued for its execution, who contribute to any of the following acts or omissions shall be punished by imprisonment of from one to six months and by a fine of from 500 to 5,000 pesetas, when the general provisions of the penal code do not fix a higher one:

1. That the lists of electors, either preparatory or definite, are not exactly drawn up, or are not exhibited to the public during the proper period and in the proper place.

2. To any change of days, hours, or place in which any ceremony is to be held, or to which the mode of designation may lead to error.

3. To fraudulent management of the operations relating to the formation of the census, organization of the boards and electoral colleges, balloting, resolutions or examinations of ballots, and nominations of candidates.

4. That the acts or electoral documents are not drafted with the due correctness and expression, or are not signed by all those who should do so, or that they do not go through the proper procedure.

5. To change or alter the ballot which the elector delivers in making use of his right of suffrage, or to hide it from the view of the public before depositing it in the ballot box.

6. To prevent or place difficulties in the way of electors, candidates, or notaries; to examine the ballot box in person before the voting begins, and in making the examination of the ballots which may be extracted from the same.

7. To intentionally make an incorrect memorandum in such manner that the names of the voters in any act are rendered obscure.

8. To the incorrect counting of votes in resolutions referring to the formation or rectification of the census, or to electoral operations, and also to the incorrect reading of ballots.

9. In making public the secrecy of the vote or of the election, in order to influence its result.

10. To an improper proclamation of a person.

11. To the lack of truth in a verbal statement to be made in an electoral act, or which, by any action or omission, tends to evade or render the proper knowledge of the electoral truth difficult.

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12. To suspend, without serious and sufficient reasons, any electoral act.

ART. 24. Private parties who contribute directly to the commission of any of the crimes enumerated in the foregoing article shall be punished by long imprisonment (arresto mayor) in its minimum degree, when the act they execute or the omission they incur is not punished by a greater penalty according to the penal code.

ART. 25. Any act, omission, or statement, contrary to this law, or to the provisions of a general character issued for its execution, which, although not included in the foregoing articles, is designed to hinder or exercise pressure on electors, in order to make use of their right or to abandon it against their will, constitutes the crime of electoral duress; and, if it has not been foreseen and punished in the penal code with a greater penalty, shall be punished by a fine of from one hundred and twenty-five to two thousand five hundred pesetas.

ART. 26. The following also commit the crime of electoral duress, although the intention of hindering or exercising pressure on electors is not evident, and shall incur the penalty mentioned in the foregoing article:

1. Civil, military, or ecclesiastical authorities who order or recommend electors to give or refuse their vote to a certain person, and those who, making use of official means of agents, or authorizing themselves with seals, envelopes, stamps, or letter heads which may have this character, recommend or condemn certain candidacies.

2. The public functionaries who institute or dispatch administrative proceedings relating to denunciations, fines, arrears of accounts, civic property, forests, public granaries, or any other branch of the administration, from the date of the call until the election is concluded.

3. The officials from the secretary of the crown inclusive downward who make appointments, removals, transfers, or suspensions of clerks, agents, or employees of any branch of the central, provincial, or municipal administration in the period intervening between the call until after the general examination of the election has been made, provided said acts are not based on a legitimate cause and do not affect in any manner the section, college, district, judicial district, or province where the election is held.

The reason for the removal, transfer, or suspension must necessarily be mentioned in the order, which shall be published in the Gazette of Madrid and in those of Havana or Porto Rico, if it emanates from the central administration, and in the official bulletin of the respective province if it was issued by the provincial or municipal administration. If these formalities are omitted it shall be considered that it has been made without cause.

The royal decrees of orders relating to civil governors of provinces and to military chiefs are excepted from these requisites.

Removals, transfers, or suspensions ordered and not communicated to the persons interested during the electoral period can not be carried

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out during the same except in the exceptional cases and manner defined in this number.

ART. 27. The following shall also incur the penalties mentioned in article 25 when greater ones are not applicable, in accordance with the provisions of the penal code:

1. Those who, by means of promises, gifts, or remuneration, solicit, directly or indirectly, the vote of any elector in favor or against a candidate.

2. Persons who cause electors to become intoxicated in order to obtain or insure their support.

3. Persons who vote two or more times at an election, take another name to vote, or do so when they are disqualified, or their right of suffrage is suspended.

4. Persons who knowingly consent without protest, should they be able to do so, to the casting of a vote mentioned in the cases of the foregoing number.

5. Persons who refuse or hinder the admission, proceeding, and resolution of protests or complaints of electors, or do not give a receipt to the person who makes the same.

6. Persons who omit the announcements and proclamations of notification ordered by the law, or who do not issue or have issued as soon ordered thereby a certification of electoral acts which has been requested.

7. Persons who, in any other manner not foreseen in this law, prevent an elector from exercising his rights or complying with his duties, or render the same difficult.

8. Persons who maliciously incite or maintain, without a sufficient reason, doubts as to the identity of a person or the entity of his rights.

ART. 28. Public officials who cause an elector on the day of the election, or on the day on which he can and desires to execute an electoral act, to leave his domicile or residence, or remain away therefrom, even though it be for the public service, or those who detain him, depriving him in similar cases of his liberty, shall, besides the penalties respectively indicated in the second paragraph of article 210 and in article 221 of the penal code, incur that of absolute perpetual disqualification.

ART. 29. Those who prevent or render difficult the free entry or exit of the electors in the place in which they are to exercise their right, their approximation to the electoral tables, the presence of notaries, candidates or electors, in such manner that they can not, or it is not easy for them to execute their commission or right, and to ascertain the regularity of such acts, shall incur, if they are public officials, the penalty of long imprisonment (arresto mayor) in its lowest degree and a fine of 500 to 2,500 pesetas; and if they are private parties the same penalty in its lowest degree, unless greater penalties are indicated in the penal code, in which case the latter shall be applied.

ART. 30. Public officials who do not deliver or who maliciously delay the delivery of documents requested by a special commissioner shall be punished as guilty of the crime of serious disobedience to the authority,

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without prejudice to the disciplinary liability they may incur at the same time.

ART. 31. The crimes provided for in the penal code relating to electoral matters shall be punished, when the special provisions of the foregoing articles are not applicable, by the penalties designated by the said code, and furthermore by a fine of 125 to 1,250 pesetas, in case a penalty of this class does not correspond to the former.

ART. 32. Common penalties for all the crimes directly related with the provisions of this law, be they either provided for in the same or in another one, shall be those of special temporary to perpetual disqualification for the right of suffrage when the guilty person is or has the character of a public official, or the suspension of the same right when he is a private person.

In cases of repetitions of crimes of this character the corresponding disqualifications for officials shall be absolute perpetual and for private parties absolute temporary disqualification besides the corresponding penalties.

CHAPTER II.—*Infractions.*

ART. 33. All lack of compliance with the obligations and formalities which this law or the provisions which may be issued for its execution impose on any persons who take part in an official character in electoral operations shall be corrected by a fine of 25 to 1,000 pesetas, if it does not constitute a crime.

Officials who for any reason whatsoever, which is not absolute incapacity duly justified, do not comply with any of the services intrusted to them by this law or its regulations, shall incur the said fine, which the board of the census to whom the service should have been rendered shall decree, with the exceptions of the prescriptions of article 42.

Presidents of provincial and municipal boards who, being obliged to receive one of the documents mentioned in any of the provisions of this law or of the regulations, shall incur the same liabilities if they do not order under their liability that they be immediately received by a special commissioner at the cost of the person who should have sent them.

Those who in such case do not inform the central board of having complied with this duty shall be corrected in the same manner.

ART. 34. The following shall also be corrected in the same manner as prescribed in the foregoing article:

1. Those assisting at electoral acts who, in a manner which does not constitute a crime, disturb the order or lack the due respect.

2. Those who, having a right to enter the electoral colleges or the boards of examination of votes, do not leave the place at the first intimation of the president.

3. Those who enter a college, section, or electoral board with arms, sticks, canes, or umbrellas, unless they are an authority or are not physically incapacitated.

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4. Notaries who, attempting to discharge their functions, do not give previous information of their intention to the person presiding over the ceremony.

5. Officials and private parties through whose fault persons concerned do not receive, in the periods fixed, and in the manner established in the law, any communication, announcement, instrument, or document which must be forwarded without prejudice to the provisions of number 4 of article 23.

6. Members ex officio and substitutes of the boards of the census who, without just cause, are not present at the session for which they were called without having excused themselves at the proper time.

The following shall be just causes for the nonattendance at sessions:

1. Absence from the place in which they are to be held.

2. Duties of more importance to the public service.

3. Reasons of personal health or family reasons, or private occupations which can not be postponed.

4. The reasons by virtue of which the president or its members do not attend the central board.

CHAPTER III.—*Provisions common to the two foregoing chapters.*

ART. 35. For the purposes of this law as public officials shall be considered those who are appointed by the Government, and those who by reason of their office discharge any function related with the elections, as well as the presidents and the members of the boards of the electoral census and the presidents and supervisors of the committees and boards for the examination of ballots.

ART. 36. The ordinary jurisdiction is the only competent one to take cognizance of electoral crimes no matter what may be the personal position of the guilty parties.

For the purposes of the provisions of this title, by electoral crimes shall be considered those specially mentioned in this law and those which, being mentioned in the penal code, specially affect electoral matters.

ART. 37. When a crime is committed within the electoral college or board the president shall order the presumed criminals arrested and placed at the disposition of the judicial authority.

The criminal prosecution arising from crimes specially of an electoral character is public, and may be instituted at any time within two months after the period of the mandate conferred by the election.

For its institution no deposit or bond shall be required.

Judges and courts shall proceed in accordance with the rules of criminal procedure.

ART. 38. No authority shall be necessary in order to indict any official.

The causes in which, by means of a final sentence, responsibility for due obedience is excused shall be forwarded without delay to the court

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which is competent to proceed against the person who gave the order which was obeyed. The period of the limitation referred to in the preceding article shall be suspended, with regard to the authority or person obeyed, from the time of the institution of the proceedings until the day on which the competent court may have received the final sentence in which the exemption of liability of the person who obeyed is declared.

When the authority who gave the order is a secretary of the Crown, or when his liability appears to be indicated in any manner whatsoever, the court taking cognizance of the proceedings shall forward the latter without delay to the congress of deputies, notwithstanding that the sentence in which the exemption of liabilities is declared is final, or that the data which result from the same are indicative of the liability of the secretary.

ART. 39. In all cases the general and the special provisions of the penal code are applicable to the crimes mentioned in this law, in so far as said provisions relate to the estimation of the crimes as consummated, frustrated, or attempted, to the participation in the same of the different persons who are the subject of the proceedings, to the mitigating circumstances of the liability, and to the consequent graduation and application of the penalties.

ART. 40. The court which is to issue the final sentences shall order the publication of the latter in the official bulletin of the province in which the crime was committed, and shall forward a copy of this newspaper to the central board of the census.

ART. 41. No petition for pardon in a cause for electoral crimes shall be admitted by the colonial department nor acted upon by the courts nor by the council of state, unless it previously appears that the petitioners have served at least half of the time of their sentence in the personal penalties and satisfied the entire pecuniary ones, as well as the costs. The authorities and the members of the corporation of whatsoever order or hierarchy who infringe this provision, giving rise to the petition for pardon being submitted to the King, shall incur the liability established in article 369 of the penal code.

The Government shall inform the central board of the census of all grants of pardons.

ART. 42. The correction of infractions appertains—

1. To the presidents of the ceremony or session in which they are committed.

2. To the municipal or provincial boards of the census in those which are respectively related with the ceremonies which said boards or their presidents are to take cognizance of.

Municipal boards can not, however, order any correction of superiors; but if they should understand that the provincial board has committed some infraction, they shall immediately inform the central board for the proper resolution.

When the judges do not forward to the boards of the census the documents necessary for the formation or rectification of the latter in

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accordance with the regulations, they shall communicate it to the presiding judge of the respective territorial audiencia, in order that he may impose the correction, and they shall report the same to the central board.

3. To the central board, with relation to other penalties.

The imposition of the fines shall be made by means of a written resolution, stating the reasons therefor. Those which may be imposed by virtue of the provisions of the first paragraph of this article, or by the municipal boards, shall be demandable before the provincial board, within the two days following the notification, which board shall limit itself to confirming or annulling the resolution.

Resolutions annulling those of provincial boards, as well as those of the latter in the exercise of its own powers, may be appealed from within a similar period to the central board, which may increase, reduce, and confirm or remit the fine within the limit of its powers.

ART. 43. The presidents of an electoral college or of a board of examination of votes, the municipal boards, and the presidents of the latter can not impose fines exceeding 100 pesetas.

The presidents of a provincial board, as well as said boards, may impose fines up to 500 pesetas.

The central board and its president up to 1,000 pesetas.

ART. 44. The payment of these fines shall be made in the special paper which the public treasury may issue for the purpose, and which it shall deliver on account to the provincial deputations, charging on the same a tax of 20 per cent on its value. The rest of its amount shall be deposited in the respective provincial treasury.

If after six days from the conclusion of the resolution the fine has not been paid it shall be judicially collected.

In the case of the insolvency of the person fined he shall undergo a personal arrest at the rate of one day for each five pesetas of the fine; said imprisonment not to exceed ten days when it is imposed by the municipal board, its president, or the president of a committee; twenty days if it is imposed by the provincial board, its president, or by those of the boards for the examination of ballots, and of thirty if is imposed by the central board or its president.

TEMPORARY PROVISIONS.

First. Within the three days following the publication of this law in the gazettes of Havana and Porto Rico, there shall be established in each one of the capitals of the islands a board, which shall be denominated "Insular Board of the Electoral Census," composed of the Governor-General as the president; of the chambers of administration of the audiencias of Havana and Porto Rico, respectively; of ten members appointed by the Governor-General from among those having the highest standing, to represent the political parties of the island in the board, and of the secretary of the general government, who shall

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have the right of speech but not of vote, and who shall discharge the duties of secretary. Furthermore, the civil governor of Havana shall form part of the insular board of the electoral census of the island of Cuba.

The powers of these boards shall be:

1. To inspect and direct the services referring to the formation and preservation of the census.

2. To preserve the printed copies of definite lists copied from the provincial registries.

3. To communicate through the president with all public authorities and officials.

4. To receive and decide all complaints which may be addressed to them.

5. To exercise disciplinary jurisdiction over all persons who take part in an official character in electoral operations, imposing fines up to 1,000 pesetas, which in a proper case judges of first instance shall collect by their command.

6. To decide questions which may arise in the execution of this law and in its regulations, adapting the provisions of both to the conditions of the islands in order to insure the independence and the truth of the vote.

Furthermore, the insular board of Cuba shall order what it may deem proper in order that the elections may be held in districts in which the state of the insurrection does not permit of the formation at the proper time of the electoral census, nor the holding of said elections in accordance with the provisions of this law and the regulations. For this purpose, for each one of said districts, it shall appoint delegates, who, together with seven of the highest taxpayers paying the land or industrial tax and seven qualified voters, shall hold the election in accordance with the instructions the insular board may give them.

Second. In compliance with the provisions of article 4 of this law, before the 26th of next December the presiding judges of the audiencias shall appoint the associate justices who are to preside over the provincial boards of the electoral census and the officials who are to preside over the municipal ones in localities where there are no judges of first instance.

Third. In order that elections may be held as soon as possible, and that the new political and administrative organisms may become operative in the islands of Cuba and Porto Rico, the following proceedings shall be observed:

On the 1st of January, 1898, at 8 o'clock in the morning, the president of the municipal board of the electoral census, appointed by the presiding judge of the audiencia of the province, shall proceed, in the chamber of sessions of the municipal council and in public session, with the installation of said municipal board in the manner prescribed by article 4 of this law.

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Immediately thereafter the mayor shall submit the last poll and shall deliver to the president of the board a duplicate list by alphabetical order and with a correlative numeration of all the residents over twenty-five years of age who are included in said poll, stating their age, domicile, and profession, and whether they know how to read and write. All the sheets of this list shall be signed by the mayor and by the secretary of the municipal council.

Thereupon the president under his liability shall have one of the two copies of this list posted in the usual place for municipal edicts and proclamations, and he shall at the same time make public by means of a proclamation or by public crier that on the 5th of the said month of January, at 8 o'clock in the morning, the municipal board of the census shall assemble in public session in the chamber of sessions of the municipal council.

Before said 5th the judges of first instance shall forward to the presidents of the respective municipal boards of the census a certified list of the final judicial resolutions which affect the electoral qualifications of the residents of each municipality and the municipal judges a list also certified of the said residents who may have died since the date of the last five-yearly poll.

On the 5th of January the municipal board shall assemble in public session at the place and at the hour mentioned, and the president shall present the list of residents drawn up by the mayor, the last poll, and the certifications forwarded by the judges.

The board shall hear any claims which may be made regarding inclusions, exclusions, and rectifications. For claims for inclusion it shall be sufficient to prove by two witnesses that the individual whose inclusion in the list is requested possesses the legal qualifications to be an elector.

At the end of the public session the board shall immediately proceed to draw up the following lists:

1. Of all the residents who have the right of suffrage according to the poll.
2. Of the persons who have died subsequently to said poll, formed with the data forwarded by the respective municipal judges.
3. Of those who are disqualified.

These lists shall be published as prescribed in the first paragraph of this provision, on the three following days, during which an appeal may be taken to the provincial board.

At this session the municipal board shall order the distribution of the electors of the municipality into sections, if they should exceed five hundred, assigning to each section a number more or less equal, within the conditions of each locality.

After this has been done, the names of the electors of each municipality shall be copied in duplicate, in alphabetical order, from the first list, separating them according to sections, and these copies shall con-

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stitute the definite lists. One of them shall be forwarded on the 9th of January, together with a certificate of the resolution of the division of the municipality into sections and of the claims which may have been presented to the provincial board of the census, which shall issue the resolutions it may deem proper; shall make in a proper case the necessary modifications, and shall order that the lists of electors be printed in the bulletin of the province before the 20th of January.

The printed copy of the list corresponding to each municipality, certified by the president and by the secretary of the provincial board, and after having been sealed, all sheets shall be forwarded in a registered letter to the president of the proper municipal board, who shall report it to the same, and shall order that there be exhibited to the public for the three following days a transcript of said copy, which shall be filed. The president and the secretary of the municipal board shall answer for the complete correctness of the copy.

The president of the provincial board shall also forward, by registered letter, similar copies to the authorities mentioned in the regulations.

Against resolutions issued by provincial boards by virtue of this temporary provision there is no other remedy but a complaint to the insular board.

On the date preceding the day fixed for the first elections which are to be held after the publication of this law, the municipal boards of the census shall meet and shall resolve upon the inclusion in the electoral lists of those who have requested it up to that date, and who prove with two witnesses that they possess the qualifications required by this law to be electors.

The persons included by virtue of these decisions or by the resolutions of the insular board shall exercise their right in the section to which their domicile corresponds.

Fourth. Until a new division into electoral districts for deputies to the Cortes in the territory of the islands of Cuba and Puerto Rico is made, the present division is hereby declared as remaining in force.

The insular boards of the electoral census shall make the division of the territory of the islands into districts and subdistricts for the election of representatives, in accordance with the royal decree of this date.

Madrid, November 25, 1897.

Approved by Her Majesty:

SAGASTA.

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ARTICLES OF THE ELECTORAL LAW OF THE PENINSULA OF JUNE 26, 1890, IN THE MANNER THEY ARE TO BE APPLIED IN ACCORDANCE WITH ARTICLE 13 OF THAT OF CUBA AND PORTO RICO.

ARTICLE 4. The following are indispensable conditions in order to be admitted in the Congress as a deputy:

1. To possess the qualifications required by article 29 of the constitution on the day on which the election takes place in the electoral district.

2. To have been elected and proclaimed elect in an electoral district or by the Congress in accordance with the provisions of this law and with those of the regulations of the same body.

3. Not to be disqualified for any reason of personal incapacity whatsoever to obtain the office on the day the election takes place.

4. Not to be included in any of the cases of incompatibilities established by the law.

ART. 5. The following are disqualified to be admitted as deputies, although they have been validly elected:

1. Those who are included in any of the cases mentioned in article 2 of this law.

The rehabilitation mentioned in No. 2 of article 2 of this law must be obtained for eligibility to be a deputy at least two years before his election.

2. Contractors of works or public services which are paid with general, provincial, or municipal funds; those who, by virtue of such contracts, have claims pending of private interest against the administration and the bondsmen and copartners of said contractors. This incapacity shall only be understood in relation to the district or subdistrict in which the work or public service is rendered.

3. Those who are discharging or have discharged one year previously in the district or subdistrict in which the election is to be held, any employment, office, or commission appointed by the government, or who have exercised any authority of popular election, by which is understood presidents of deputations and deputies who, during the previous year, may have discharged the office of member of the provincial committees.

The secretaries of the Crown and the officials of the central administration of the islands and of the Peninsula are excepted.

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The incapacities referred to in this number 3 are limited to the votes cast in the district or in the subdistrict, or where the authority or duties with which the deputy-elect has been invested are effective.

ART. 6. At any time a deputy becomes disqualified, after having been admitted into the Congress, for any of the reasons enumerated in article 5, he shall be declared disqualified, and shall immediately lose the office.

ART. 7. Those who are already in possession of the office of deputy to the Cortes can not be admitted in the same Congress by virtue of a partial election, if they have not renounced the same before the convocation of the district for said partial election.

ART. 8. The office of deputy to the Cortes is gratuitous and volununtary, and may be renounced before or after the oath has been taken; but the renunciation can not be admitted without the previous approval by the Congress of the certificate of the election.

ART. 22. In districts in which a deputy is to be elected, each elector can not validly give his vote to more than one person; when more than one person is to be elected up to four, he shall have a right to vote for one less than the number to be elected; for two less than the number if more than four are to be elected, and for three less if more than eight are to be elected.

ART. 37. The following candidates shall have a right to appoint supervisors for electoral committees of the sections included in the district or subdistrict:

1. The ex-deputies to the Cortes who may have represented the same district or any other one of the island.

2. Those who may have been candidates in the same district in previous elections and obtained at least one-fifth of the total number of votes cast.

3. The ex-senators elected for the island to which the district or subdistrict appertains.

4. The candidates for deputies to the Cortes nominated by means of petitions signed by the electors of the respective district or sub-district, or by notarial instruments, with the intervention of a competent official, the electors of which amount at least to one-twentieth of the total number of those included in the last list of the district or subdistrict.

ART. 73. A partial election for a deputy in one or more districts can only be held by virtue of a resolution of the Congress or because their representation is vacant in the Cortes.

ART. 74. For districts which, in accordance with this law, are to elect three or more deputies, it shall only be understood that the representation in the Cortes is vacant when for any reason whatsoever at least two of their deputies are absent.

ART. 75. The royal decree calling electoral colleges of one or more districts to a partial election of deputies to the Cortes shall be pub-

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lished in the Gazette of Madrid within eight days counted from the date of the communication of the resolution of the Congress. In the same royal decree there shall be fixed the day on which the election is to be held, and this day can not be fixed before twenty or after thirty, counted from the date of the call. Simultaneously there shall be published the royal decree in the Gazettes of Havana and Porto Rico, according to the cases, the proper telegraphic message being sent to the respective governors-general of both Antilles.

ART. 76. The partial election shall be held on the day fixed by means of the proceedings and in the manner prescribed by this law for general elections.

ART. 77. The Congress making use of the prerogative appertaining to it by Art. 34 of the constitution, shall examine and judge of the legality of the elections through the proceedings fixed by its regulations, and shall admit as deputies those who appear to be legally elected and proclaimed in the districts, if they possess the capacity necessary to fill the office and are not included in the incompatibilities which the law declares.

ART. 78. In cases of ties in elections, if only one of the candidates tied has the legal qualifications to be a deputy, he shall be immediately proclaimed and admitted after the election has been approved.

The one shall also be admitted immediately and proclaimed by the Congress, who appears to be legally elected, if in the certificate there are any protests against the election of the other candidate or candidates tied.

In the absence of these differences, there shall be proclaimed as deputy from among the candidates tied:

1. The person who has filled the office the greatest number of times.
2. The person who has filled the same for the greatest period.
3. The senior in age.

ART. 79. The minutes of the board of examination of votes forwarded to the central board, in compliance with the provisions of art. 69, shall be delivered by the latter, as soon as received, to the office of the secretary of the congress, at whose disposal said board shall in any case have the other documents relating to electoral certificates.

ART. 80. Deputies-elect, or supposedly so proclaimed by the boards of examination of votes in general elections, must present the respective credentials within the period of two months, counted from the date of the assembling of the Cortes.

For those proclaimed in partial elections the period shall be counted from the day of their proclamation by the board of examination of ballots.

Persons who do not present their credentials within the periods established by this article shall be understood to have renounced their office, and consequently the vacancies of the corresponding district or college shall be declared after the congress decides on the legality of the election.

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ART. 81. If the same person has been elected for two or more districts at the same time, he shall choose one of the same before the congress within the eight days following the approval of the last of his certificates, if he has at that time already been admitted as a deputy, or within thirty days otherwise.

In the absence of an express option in either period, the district which appertains to him shall be decided by lot before the congress and the vacancy shall be declared with regard to the rest.

ART. 82. The electors and the candidates who may have taken part in an election may appear before the congress at any time before the approval of the respective certificate with the claims they may see fit to submit against the validity or result of the said election or against the legal capacity of the deputy-elect before the latter has been admitted.

ART. 83. When, in order to be able to estimate and judge as to the legality of an election protested against before the congress, it is deemed proper to make some investigations in the town where the election was held, the president of the chamber shall give and communicate directly the orders to the judicial authority of the territory to whom he may deem it proper to intrust the commission for the purpose, and the authority commissioned shall communicate with the same president in the discharge of his commission without requiring intervention from the Government.

ART. 84. After an election has been approved by the Congress and the deputy-elect has been admitted by the same, no claim whatsoever can be admitted nor can the legal qualifications of the deputy be questioned unless for reasons of incapacity subsequent to his admission.

Madrid, November 25, 1897.

Approved by Her Majesty.

SAGASTA.

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TRANSLATION

OF

THE LAW OF EMINENT DOMAIN,

EXTENDED TO CUBA AND PORTO RICO BY ROYAL DECREE OF JUNE 13, 1884,

AND

REGULATIONS FOR ITS APPLICATION.

WAR DEPARTMENT,
DIVISION OF INSULAR AFFAIRS.
MARCH, 1901.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1907

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TRANSLATION

OF THE

LAW OF EMINENT DOMAIN, EXTENDED TO CUBA AND PORTO RICO BY ROYAL DECREE OF JUNE 13, 1884, AND REGULATIONS FOR ITS APPLICATION.

LAW OF JANUARY 10, 1879.

TITLE I.—GENERAL PROVISIONS.

ARTICLE 1. Forcible expropriation for a cause of public utility, authorized by article 10 of the Constitution, can not take place, with regard to real property, except in accordance with the provisions of this law.

ART. 2. Works of public utility shall be those whose direct object is to furnish to the State, to one or more provinces, or to one or more towns, any uses or improvements which may redound to the general good, whether executed on account of the State, of the provinces, or of the towns, or by companies or private enterprises duly authorized.

ART. 3. The expropriation referred to in article 1 can not take place without the following requisites being first complied with:

First. A declaration of public utility.

Second. A declaration to the effect that all or a part of the real property which it is desired to expropriate is indispensably necessary for the execution thereof.

Third. An appraisal of what is to be sold or assigned.

Fourth. Payment of the price which represents the indemnity for what is forcibly alienated or ceded.

ART. 4. Any person deprived of his property without the requisites mentioned in the foregoing article having been complied with, may institute summary proceedings to retain or recover possession in order that the judges may protect and, in a proper case, restore possession to the person improperly dispossessed.

ART. 5. The expropriation proceedings shall be conducted with the persons who, in accordance with the registry of property or the tax list, appear as the owners or as having their possession recorded.

If, on account of their age or for any other reason, the owner of a piece of property should be incapacitated to enter into a contract, and should

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have no curator or other person to represent him, or the property should be the object of litigation, the proceedings shall be conducted with the *promotor fiscal*, who may validly perform in his name all that is stated in the foregoing article.

When the owner of an estate is unknown, or if known, his whereabouts are unknown, the order or decree relating to the expropriation of the estate shall be published in the *Boletin Oficial* of the province and in the *Gaceta de Madrid.* Should no statement be forthcoming within a period of fifty days, either from the owner in person or through some one duly empowered, it shall be presumed that consent is given for the representative of the department of public prosecution to represent said owner in the expropriation proceedings.

ART. 6. All those who can not alienate the property which they administer without the permission of a judicial authority, are authorized to do so in the cases mentioned in this law, without prejudice to securing, in accordance to law, the amounts which they may receive in consequence of the alienation in favor of the minors or wards. In no case shall said amounts be delivered to them, but they shall always be deposited and held at the disposal of the proper judicial authority.

ART. 7. Transfers of ownership, under whatsoever title, shall not interfere with the expropriation proceedings, the new owner being considered as subrogated to the obligations and rights of the former owner.

ART. 8. The rents and contributions pertaining to the property expropriated for works of public utility shall be admitted during the year following the date of the alienation as an evidence of the legal capacity of the person dispossessed to exercise the rights which may pertain to him.

ART. 9. The concessionaires and contractors of public works who may be properly authorized to obtain the alienation, temporary occupation, or use of materials, in the manner authorized by this law, shall be subrogated to all the obligations and rights of the administration for the purposes of this law.

TITLE II.—EXPROPRIATION.

SECTION I.—FIRST PERIOD.—DECLARATION OF PUBLIC UTILITY.

ART. 10. The declaration that a work is of public utility shall be the subject of a law, when, in whole or in part it must be paid for with the funds of the State, or when without the attendance of these circumstances its importance so requires in the judgment of the Government.

It is the duty of the Government, through the respective Minister, to make said declaration when the work concerns several provinces, or when it must be paid for or aided with general funds, for the distribution of which it has been previously authorized by law.

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In other cases this duty pertains to the governor of the province, after hearing the deputation, and also the ayuntamiento, when municipal works are in question.

ART. 11. Works in charge of the State executed according to the prescriptions of Chapter III of the law of public works, those included in the general, provincial, and municipal plans designated in articles 20, 24, and 14 of the said law of public works; every work, whatever be its character, whose execution may have been authorized by a law or may have been designated in the special laws for railways, roads, waters and ports which have been enacted, or may be enacted hereafter, are excepted from the formality of a declaration of public utility. All works of urban police, and especially the enlargement and internal improvement of towns, are also exempt from this requirement.

ART. 12. Proceedings for a declaration of public utility may be instituted at the instance of the authorities who are to make said declaration with the consent of one or more corporations, or at the instance of a private individual or a properly organized company.

ART. 13. In any case there shall be presented in duplicate, to the proper authority, according to article 10, the complete plan of the work it is proposed to construct, with sufficient explanations, not only to form a clear idea of the same, but also of the advantages its construction would bring to general and common interests, and a statement of the funds available to carry out the work.

The authority whose duty it is to make a declaration of public utility shall, by means of the official periodicals of the districts interested in the work, and by means of communications directed to the authorities of the same, advise both them and the public of the request made, so that at the proper time they may present such objections as they may deem proper within a period which shall be not less than eight days, if a work which affects only an ayuntamiento is in question; twenty days, if it affects a province, and thirty days, should it extend to a number of provinces, in which case the announcements shall be also inserted in the *Gaceta* of Madrid.

SECTION II.—SECOND PERIOD.—NECESSITY OF THE OCCUPATION OF THE REAL PROPERTY.

ART. 14. After a work has been declared of public utility, it is the duty of the administration to decide whether all or a part of the real property is necessary for the execution of said work.

ART. 15. The person or corporation authorized to construct a work shall present to the government of the province a list of the persons interested in the expropriation, according to the plan approved by the same, and an authorized revision of it by those charged with the inspection of works, either by the public administration or by the corporations which are to finance the same, stating therein the correla-

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tive situation, the number and kinds of property of each owner that must be occupied in whole or in part, as well as the names of the lessees or tenants, making the proper division by municipal districts.

ART. 16. The governor of the province, within three days after having received the reports referred to in the foregoing article, shall transmit to each mayor a nominal statement of the part relating to his district, in order that, when duly compared with the tax list, and with the data in the registry of property, should it be necessary, and the errors, if any, corrected, he prepare in accordance therewith, and transmit within a period not to exceed fifteen days, the report required for the purposes mentioned in article 5 of this law.

ART. 17. When the nominal statement of the property owners, authenticated by the mayors has been received, the governor shall order its insertion in the *Boletin Oficial* of the province, fixing a period, which shall not be less than fifteen nor more than thirty days, in order that the persons or corporations interested may object to the necessity of the occupation proposed, and in any manner oppose the utility of the work which is finally determined by the declaration of public utility.

ART. 18. After the claims have been filed within the period mentioned in the foregoing article, the civil governor, after hearing the provincial commission, shall decide within the following fifteen days as to the necessity of the occupation proposed for the execution of the work.

ART. 19. From the decision of the civil governor an appeal lies only to the proper department within the eight days following that of the administrative notification.

The department shall decide within the thirty days following that of the record of the filing of the proceedings by means of a royal decree.

ART. 20. After the necessity of occupying one or more properties has been declared in order to execute a work of public utility, the designation shall be made of the estates or parts thereof to be expropriated, as also their appraisal; and for this purpose the governor of each province of those interested in the work shall notify, by means of the *Boletin Oficial*, the property owners whose names appear in the corrected nominal statement, and furthermore they shall be personally or individually notified, fixing a period of eight days, in order that they may appear before the respective mayors and designate the expert who is to represent each one in said operations. If they should not be found, the formalities prescribed for citation and summons in the law of civil procedure shall be observed.

For the same purpose he shall communicate with the representative of the administration or of the corporation which is to finance the work, who must have been previously properly empowered.

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The appointment of experts before the mayors should be made by the same persons whose names appear in the nominal statement, and no other representation shall be admitted except by a power of attorney, duly authorized, either general or special for this case.

ART. 21. The experts appointed both by the administration and by the property owners must have a professional degree corresponding to the kind of work committed to their charge, and no other limitations of the conditions of appointment shall be made except that they have practiced their profession for at least one year. The appointment of persons who have not these qualifications, as well as those made without observing the provisions of the foregoing article, shall be considered null, it being understood that the respective property owners, as well as those who have made no appointment, consent to have the expert who is to represent the administration, or the person who discharges his duties, or that of the corporation who finances the work, to represent them.

ART. 22. The engineer or professional person who represents the Government, or in general the person referred to in the foregoing article, shall receive from the governor of the province a certificate in which are stated the appointments made before the mayor or mayors of the districts which are included in the work and shall fix the day on which the experts are to commence the surveys, directing the same personally or through their assistants, so that in the least possible time and with the greatest exactness all the necessary data may be obtained, in order to make the appraisal.

ART. 23. The data referred to in the foregoing article shall consist of a detailed and correlative statement of all the properties that are to be expropriated, with their situation, character, total area, and boundaries, as well as the kind of land they contain and explanations as to their nature or products.

Furthermore, the rent of each property, as shown by existing contracts, shall be stated, as well as the taxes paid on the same, the taxable value represented, and the tax pertaining thereto, according to the last assessments.

It shall also be stated how the expropriation affects each estate, giving the area desired to be expropriated, and if not to be entirely occupied, the form and area of the remaining part shall be stated. These facts shall be shown in a plan drawn on a scale of 1 to 1,400 for rural property, and on a scale of 1 to 1,100 for urban property, which plan shall accompany the report indicated.

There shall also be stated if in some estate that is not to be entirely occupied it would be more advisable to expropriate all or leave the remainder for the owner, for which purpose the opinion of the expert appointed by the owner must be followed.

ART. 24. The documents referred to in the foregoing article must

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be signed by common consent by all the experts engaged on any work or part thereof, or in each municipal district, and they shall be transmitted by the director of the work to the civil governor of the province with his report, containing also any remarks he may deem proper as to the conduct of the experts.

ART. 25. The cost of these operations, as well as the salaries of all the experts, shall be defrayed by the administration, or by its legal representative, for the entire period.

The buildings, plantings, improvements, and works which are not of recognized necessity for the preservation of the property, made after the date which terminates this period, shall not be taken into account in fixing the amount of the indemnity.

SECTION III.—THIRD PERIOD—APPRAISAL.

ART. 26. When the estate or part of an estate that it is necessary to expropriate, belonging to an individual, establishment, or any corporation, is definitely known, the representative of the administration shall try to secure the same by agreement with the owner, for which purpose he shall address, through the governor of the province, to the interested property owners, a statement of the appraised value of each piece of property, made by the expert of the administration, in which these circumstances appear taken from the general report, and there shall be included the fixed price to be paid to the owner in full and free of all costs. The owner within a period of fifteen days shall fully and freely accept or refuse the offer, any conditional acceptance being considered null.

The acceptance shall carry with it the right for the administration to occupy the entire property or the part thereof determined in the statement of valuation, always after the payment of the price thereof.

ART. 27. When the owner refuses to accept the offer of the administration, he is obliged to present another statement of valuation, signed by his expert, in which, according to the same data, must be stated the appraisal he believes to be just, which appraisal must be given to the governor within the period granted to the owner for deciding upon the offer made.

The representative of the administration shall transmit another similar statement, signed by the expert appointed by him, as soon as the governor has been notified of the refusal of the owner.

The fees earned by the experts for these appraisements shall be respectively paid by each party in interest, as also the stamped paper on which the statement of appraisal is written.

ART. 28. In the same there must be stated in detail the grounds for the appraisal, both with regard to the class of the property and to the price fixed. The experts shall take into account all the circumstances which may contribute to increase or diminish its value, com-

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pared with other similar properties, which have been the object of a recent appraisement in the same municipal district, and to the value of the part of the property occupied shall be added the sums representing the damages of all kinds which may be caused by the work requiring the expropriation; and as an offset to said damages, the benefits resulting to the remainder of the property from said work should also be considered.

The experts are responsible for the irregularities found in the statements of appraisal or for nonagreement with previous appraisements.

In case that the total amount of one or more statements of appraisal should be the same in both the valuation of the administration and in those of the owners, the value shall be considered as fixed by common consent.

In case of a difference between the statement of the administration and that of the owners, the experts of both parties must meet within a period not to exceed eight days, in order to see whether they can not agree as to the appraisal.

After said period has elapsed without the experts coming to an agreement, it shall be understood that they can not agree and the proceedings shall take the proper course.

ART. 29. The administration or its legal representative may, if advisable, occupy at any time real property that may have been the subject of an appraisal, on the deposit of an amount equal to that fixed in the statement of the expert of the owner, for which purpose the governor of the province shall issue the proper orders.

The owner is entitled to receive 4 per cent per annum of the amount stated for the period that elapses until he receives the amount of the expropriation definitely determined.

ART. 30. When the expert appointed by the administration and the one appointed by the owner can not agree in determining the amount of the expropriation, the civil governor of the province shall send a communication to the judge of the district requesting him to appoint a third expert.

ART. 31. The judge within eight days after receiving the communication mentioned in the foregoing article, and under his personal liability, shall appoint, *ex officio*, the expert, record his acceptance, and communicate it to the governor of the province without admitting or consenting that any objections whatsoever be made.

ART. 32. Until the judge makes the appointment of the third expert the civil governor shall order that there be attached to the proceedings:

1. The titles of ownership of the properties which the administration considers proper to demand from the persons interested.

2. The complaints presented by the property owners during the three years, last past, to the public treasury relative to the assessment of the land tax.

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3. A certificate of the tax levy on each property for the distribution of the land tax and of the quota pertaining to each during the three years last past.

4. A certificate of the register of property as to the price of the real properties it is proposed to expropriate, stating whether any of them had been transferred during the last ten years and otherwise the price for which other properties adjacent to that which is the object of expropriation has been alienated during the twelve months last past, or other property which, owing to location and character, is in similar conditions.

ART. 33. After the data mentioned in the foregoing article have been attached to the proceedings, and all other data which the civil governor of the province may consider pertinent, and the appointment of the third expert has been received from the judge, the latter, within a period that shall never exceed thirty days, shall fulfill his duty by means of a certified statement, which shall be attached to the proceedings drafted in the same manner in which the statements of appraisal were prepared, it being understood that the value must always be within the limits which have been fixed by the expert of the administration and that of the owner.

ART. 34. The governor, in view of the declarations of the experts and the other data attached to the proceedings, within the period of thirty days, and within the minimum and maximum price fixed by the experts, after hearing the provincial commission, shall decide, and state the reasons for his decision, the amount that is to be paid for the expropriation, communicating the result to each of the interested parties.

This resolution shall be published in the *Boletin Oficial* of the province when the parties in interest agree thereto.

When the resolution of the governor is final, it shall be complied with according to the procedure prescribed by the law for accounting and by special regulations.

ART. 35. Private persons may appeal to the Government within thirty days after receiving administrative notice of the decision of the governor, and its decision shall terminate governmental proceedings. The Government, represented by the proper minister, may demand from the governor the proper record of proceedings within the same period and review his decision.

In either case the proper royal order shall be sent to the governor within a period not to exceed thirty days.

The royal order accepted by the parties in interest shall be published in the *Boletin Oficial* of the province.

From the royal order terminating the governmental proceedings, an appeal lies by contentions proceedings within two months, counted from the date of the notification of the administrative decision, both for a vice in the procedure prescribed in this law as well as for an

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error in assessing the value of the land expropriated, if said error should represent at least the sixth part of the true value.

ART. 36. In all cases in which forcible expropriation takes place, in addition to paying to the person dispossessed the price at which his property was valued, he shall be allowed 3 per cent in consideration of the special value which he may attach thereto (*precio de afección*).

SECTION IV.—FOURTH PERIOD.—PAYMENT AND TAKING OF POSSESSION.

ART. 37. When the decision of the governor as to the price of the expropriation becomes final, immediate payment thereof shall be made.

The payment shall be made in coin, before the mayor of the district within which the estates are situate, for which purpose due notice shall be sent to him, with a list of the persons interested, long enough in advance so that they may assemble in the "Casa Consistorial" on the day and hour set for the payment.

ART. 38. The mayor shall see that the person who for this purpose represents the administraton, or the person who has the right to represent him, delivers the amounts stated on each statement of appraisal to the acknowledged owner of the estate, according to the provisions of articles 5 and 6 of this law, the signature of the person writing the receipt on the statement of appraisal being authenticated with the seal of the mayor's office.

When a property owner can not sign, one of those present shall do so, at his request, in which case, as well as in the case of one that will not admit of a substitute owing to the absence of the principal, the mayor shall affix his "*visto bueno*," in order to authenticate said signatures.

ART. 39. If any property owner should refuse to receive the amount designated in the respective statement of appraisal, or if upon the right to receive the value of the expropriation of one or more estates a question should arise that might occasion litigation, or if with reference to the liquidation of the royal dues upon some of them there is no agreement among the interested parties, the mayor shall suspend the payment of the corresponding amounts, recording all in a statement which he shall transmit to the civil governor as soon as the payments have been made. In this report shall also be included the names of the property owners who, notwithstanding an express citation, were not present at the payment.

ART. 40. The governor shall order the deposit of the amounts included in any of the cases mentioned in the foregoing article, and also when from the titles of the estates there should appear any obligation to make restitution, and the persons interested must apply to him when the time arrives for their realization or cancellation.

ART. 41. When the work of expropriation has been concluded in one municipal district, or in one part of the work, the person who

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executed the work shall deliver to the governor of the province a duly authenticated copy of all the statements of appraisal reached by any method which constitute the proceedings of that part of the work, so that the offices may take note of the transfer of ownership of the estates included therein; the law being observed with reference to inscription in the registry of property.

ART. 42. The rights referred to in article 4 can not be exercised by assuming that a greater area than that indicated in the respective proceedings has been occupied of an estate that has been the object of expropriation.

Should the necessities of the work require a larger occupation the valuation shall be increased on the termination thereof, or at once should the property owner demand it, at the rate agreed upon in the original proceedings, providing that the excess does not exceed the fifth part of the area contained in said original proceedings.

Otherwise the increase must be the subject of a new expropriation, although the execution of the works in course of construction can not be retarded thereby. When this occurs the new valuation shall include the land to be occupied or that has been occupied, and in no manner whatsoever the damages that may have been considered in the original proceedings.

ART. 43. If the work requiring the expropriation is not executed, or if executed there should result some surplus piece of land, as also in case the estates should remain without application on account of the object of the forcible expropriation having terminated, the original owner may recover that which was expropriated, returning the sum which he may have received or the amount which proportionately corresponds to the part, unless the parcel referred to should be a part that, without being indispensable to the work, was ceded for the convenience of the property owner, according to the last provision of article 23.

The original owners may exercise the right granted to them by the foregoing paragraph within the period of one month, counted from the day upon which the administration notifies them of the nonexecution or removal of the work which gave rise to the occupation of the whole or a part of the estates which were expropriated; and upon the expiration of that period, without a petition for a return, it shall be understood that the State may dispose of the property.

ART. 44. For the purposes of this law a parcel in urban estates is understood to be every surplus left after the expropriation that is larger than 3 meters, insufficient for building purposes according to the municipal ordinances.

In rural estates, when the part is small and its working difficult and expensive, in the opinion of experts.

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SECTION V.—INTERNAL IMPROVEMENTS IN LARGE TOWNS.

ART. 45. The expropriations necessary for the improvement, sanitation, and widening of streets of large cities shall be governed by the following provisions.

ART. 46. The municipal councils of large cities which contain not less than 50,000 inhabitants and which need interior improvements shall form the entire or partial plans of the works which are to be made within the boundaries of the same, either to harmonize with its outer growth, should there be any, or to facilitate transit, adornment, or sanitation of cities.

In the plans shall be noted with exactness the streets, squares, and lines proposed, and the lands or lots which the execution of the work may require, and the proceedings for expropriation being instituted according to the procedure prescribed in this law and the regulations for its execution, it shall be transmitted to the department in charge of civil constructions, so that the proper declaration of public utility of the work may be made.

ART. 47. For the purposes mentioned in the foregoing article not only are the estates which occupy the land necessary for the public street entirely subject to forcible expropriation, but also those which entirely or in part may be included within the two lateral and parallel zones of said street, which must not, however, exceed 20 meters the depth or width of the said zones.

ART. 48. When for the regulation or correction of some square (block) it is necessary to destroy a courtyard, street, or part of a street, the properties which have fronts or windows directly upon the same are also subject to forcible expropriation, should their owners not consent to their removal.

ART. 49. In the forcible expropriation required by the execution of the work, the value of the property shall be regulated by the price thereof which obtained before the project was approved.

ART. 50. The expropriations made for the purposes mentioned in the articles of this section shall be absolute—that is, there shall be included in the same the annuities (censos), ownership, and all other incumbrances and easements which directly or indirectly affect the rights of ownership, so that when the expropriation is made of the estate they can not be revived for any reason for the new lots which may be formed, even when all or a part of the land of the same is formed from the property or properties subject to said charges.

ART. 51. The ayuntamientos, in order to meet the cost of works declared of public utility, may contract the necessary loans, the formalities prescribed by law being observed.

ART. 52. For the purposes of article 115 of the general law of public works of the 13th of April, 1877, it is declared that in addition to

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exemption from taxes and charges on transfers of ownership granted ayuntamientos for the properties they must acquire in order to carry out the works of improvement, a similar exemption is granted to them in selling the new lots which result from the properties expropriated for said purpose.

ART. 53. They may also execute, themselves or through concessionaire companies, the works in question with the authority of the Government, but they must keep a separate account of everything exclusively relating to the same.

ART. 54. For the execution of the plans of works to which the preceding articles refer, all the rules and provisions prescribed in this law must be observed, and with regard to the parcels the provisions of the laws of the 17th of June, 1864, and that for the enlargement of towns.

TITLE III.—TEMPORARY OCCUPATIONS.

ART. 55. The administration, as well as the corporations or persons to whom their rights may have been subrogated, may temporarily occupy lands of private ownership in the following cases:

First. For the purpose of making studies or performing technical operations lasting a short time, the purpose of which is to collect data for the formation of the plan or for the remarking of the ground plan of a construction.

Second. For the establishment of stations and temporary roads, workshops, storehouses, deposits of materials or any others required by the works previously declared of public utility, with regard to the construction thereof as well as with regard to the ordinary repair or separation.

Third. For the extraction of materials of all kinds which may be necessary for the execution of said works, whether scattered over the estate or whether they must be the object of a specially instituted working.

ART. 56. Urban property is specially excepted from temporary occupation or the imposition of easements; but in limited cases, in which the use thereof may be necessary for the services mentioned, the express permission of the owner must be obtained.

ART. 57. The public official in charge of the study of a work of this character, or the private individual duly authorized for the same work, shall be provided by the governor of the province with credentials for the mayors of the towns within whose districts they are to work, in order that they may be given all the assistance possible and most specially the securing of permission from the respective owners for the commission in charge of the studies to pass through their estates. The damage which may be caused thereon by the work must be paid at once after appraisal of two experts, appointed by the chief in

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charge of the studies and the proprietor, or according to an adjustment by the mayor or by the person upon whom he may have delegated his functions, if the former should not agree. In case of objection without cause, the mayor shall inform the governor thereof, in order that he may render the decision which may be proper in accordance with the general law of public works.

At the instance of a party, and after the evidence which may be considered advisable, the governor may withdraw the authorization granted and enforce the liability which may be proper for any abuse committed.

ART. 58. The declaration of public utility of a work carries with it the right to the temporary occupations required in the execution thereof.

The necessity of the latter shall be the object, whenever necessary, of a proceeding conforming to the provisions of the second section of Title II, but the declaration of the governor referred to in article 18 shall be final, and without prejudice to subsequent proceedings the appraisal and the consequent occupation may take place. When an estate is in question with whose owner prior negotations have been had, the publication of the notices in the *Boletin Oficial* shall be suspended, the negotiations being conducted with said owner through the mayor.[1]

ART. 59. As it is not possible in a majority of cases of temporary occupation to fix in advance the extent or the duration of said occupation, the governor shall order that it take place after an agreement between the administration and the owner as to the sum to be deposited to answer for the payment which may become due. Should no agreement be reached, the provisions mentioned in article 29 et seq. of the law shall be observed.

Before the temporary occupation takes place of an estate without the prior payment of the amount of the occupation the condition of said estate shall be stated, with a report of any circumstance which could offer doubts in the appraisal of the damages caused, in accordanec with the provisions prescribed for a full expropriation in accordance with article 23.

ART. 60. The appraisals in cases of temporary occupation shall always be considered in connection with the rent due which the owner has not received during the occupation, adding thereto the damage caused the property or the presumed cost of reestablishing the same in its original condition.

The appraisal of the cost of a temporary occupation must never represent as much as the value of the estate. The administration, if the appraisal of the prejudices should appear excessive, may request an

[1] This article is inserted as corrected by the law of August 4, 1882.

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appraisal of the full expropriation by the means prescribed in this law, and accept it, provided that the amout thereof does not exceed one-half more than the former.

ART. 61. The value of the material taken from an estate or extracted from quarries situated thereon shall be allowed only in case that said material should have been gathered by the owner prior to receiving notice of the necessity thereof for the use of the administration or that the quarries are open and being worked prior to said period, and that he prove that he requires said material and the product of the latter for his own use. With the exception of this case, in order that the value of the material extracted from an estate may be allowed, the owner must prove:

First. That said materials have a market value.

Second. That he has paid the proper tax corresponding to the industry which he exercises by reason thereof during the quarter preceding the quarter during which the necessity for the occupation was declared.

It shall not be sufficient, therefore, for the purpose of declaring that an allowance is proper for the material, that it could have been utilized at some time, with the permission of the owner, or for any compensation whatsover.

Neither shall claims for indemnity be taken into consideration which are presumed by reason of the leases of the estates for the establishment of specific industries, provided that they are not established under the conditions mentioned.

ART. 62. When the preservation or repair of a work of public utility requires, in whole or in part, the permanent working of a quarry, the expropriation will be proper in accordance with the procedure prescribed in this law.

ART. 63. The crops or fertilizers on an estate at the time of the occupation thereof for a work of general interest, not considered at the time of making the expropriation, shall be appraised and paid for at the time of said expropriation, by means of a summary appraisal made by two experts, one appointed by each party, between whom the mayor shall decide, or one of his delegates, should no agreement be reached; it being understood that the amount of this appraisal must never exceed 3 per cent of the value which may have been given the estate in the expropriation proceedings. These proceedings shall be conducted with the lessees or cultivators of the estate, the designation of which shall be made by the mayor in accordance with the entries contained in the municipal registers.

TRANSITORY PROVISIONS.

ART. 64. All expropriation or temporary occupation proceedings pending at the time of the publication of this law shall be governed

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by prior legal provisions unless both parties should choose to conform to the provisions of this law.

ART. 65. All laws, decrees, regulations, or orders contrary to this law are hereby repealed.

ART. 66. The Government shall publish the regulations which may be necessary for the execution of this law.

Therefore:

We order all tribunals, justices, chiefs, governors, and other authorities, civil as well as military and ecclesiastical, of whatsoever class and rank, to observe and enforce the observance, fulfill and execute this law in all its parts.

Given in the Palace on January 10, 1879.

I, the King.

C. FRANCISCO QUEIPO DE LLANO,
Minister of the Interior.

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REGULATIONS

FOR

THE APPLICATION OF THE LAW OF EMINENT DOMAIN.

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REGULATIONS FOR THE APPLICATION OF THE LAW OF EMINENT DOMAIN.

ROYAL DECREE OF JUNE 13, 1879.

In accordance with the recommendation of the Minister of the Interior, after hearing the Council of State in full, and with the advice and consent of the Ministers, I hereby approve the attached regulations for the execution of the law of eminent domain.

ALFONSO.

Given in the Palace on June 13, 1879.

C. FRANCISCO QUEIPO DE LLANO,
Minister of the Interior.

CHAPTER I.—PROCEEDINGS FOR THE DECLARATION OF PUBLIC UTILITY.

ARTICLE 1. The proceedings for the declaration of public utility of a work in cases in which this formality is necessary, according to the provisions of the law of January 10, 1879, on forcible expropriation, shall conform to the prescriptions contained in this chapter of these regulations.

ART. 2. When a work is in question the cost of which is to be defrayed in whole or in part with funds of the State, a plan of the work must precede the proceedings for the declaration of utility, which plan shall be drafted by the engineer or technical agent to whom the direction may pertain, according to the cases.

The draft of the plan shall conform to the provisions of article 6 of the regulations of July 6, 1877, for the execution of the general law of public works of April 13 of the same year.

ART. 3. The plan shall be transmitted to the civil governor in whose province the work is to be executed, in order that it may serve as a basis for the public notice referred to in article 13 of the law on expropriation. If the work should be included in two or more provinces, the notice may be issued in the same, successively or simultaneously, it being necessary in the latter case that as many copies be made of the plan as there are provinces, in order to deliver one to each governor.

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Said authority shall order that the proper edicts be published in the official periodicals, for the purposes and for the period of time which the law fixes in the second paragraph of article 13.

The Government shall also have a similar notice inserted in the *Gaceta de Madrid*, another copy of the plan being placed at the disposal of the public in the office of the department to which the work may pertain.

ART. 4. After the period fixed for the hearing of objections to the plan has elapsed, the governors shall forward the proceedings had in connection therewith to the proper department, together with their own reports.

The minister, after hearing thereupon the proper technical or administrative corporations, shall draft, if a declaration of public utility is proper, the project of law referred to in article 10 of the expropriation law, which must be presented to the Cortes for the closing of the proceedings.

ART. 5. Proceedings similar to those mentioned in the foregoing articles shall be had for the delaration of public utility of a work when the importance of the same requires, in the judgment of the Government, that said declaration be the subject of a law, although the work does not affect the general interests of the nation.

ART. 6. When the cost of the work is to be defrayed or assisted with general funds, for the distribution of which the Government may be authorized by means of a law, the procedure prescribed by articles 2 and 3 shall be observed, and the proper minister, after hearing the technical and administrative corporations, and in serious cases the council of state, shall resolve upon the declaration of utility by means of a royal decree.

ART. 7. When the cost of the work is to be defrayed with provincial funds, and should the interests of two or more provinces be concerned, the respective deputations shall provide for the draft of the project of the work in question by the technical directors of the proper service.

The draft of this project shall be prepared in accordance with the special forms which may have been published by the proper department for each case, and in their absence, in accordance with those used by the public works service.

ART. 8. The project referred to in the foregoing article shall serve as a basis for the public hearing which must be held in each of the provinces interested, which may be had successively or simultaneously, the formalities prescribed in article 3 of these regulations being observed in the latter case as well as in all else relating to the hearing.

After the period for the admission of objections has elapsed, the governors shall forward the proceedings to the proper minister, who shall decide as to the declaration by means of a royal decree, after hearing the proper consultive corporations.

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ART. 9. If the cost of the work is to be defrayed with provincial funds and should interest one province only, the deputation shall order that the proper expert make the study of the project. In the formulation of said project the formalities established in article 59 of the regulations for the general law of public works shall be observed.

ART. 10. The project shall be forwarded by the deputation to the governor of the province in order that it may serve as a basis for the public notice or hearing. The governor shall have the proper advertisement inserted in the *Official Bulletin*, fixing a period, which can not be less than twenty days, for the hearing of any objections.

Upon the expiration of the period fixed, the governor, after hearing the reports of the official and corporations which he may consider proper, and in every case the report of the provincial commission of the deputation, shall make the declaration of public utility of the work, if proper.

ART. 11. If the work is municipal the proper ayuntamiento shall have the project drafted by the respective expert.

If the work should affect more than one municipal district in the same province the different ayuntamientos interested must agree as to the person who is to make the study, and in case of disagreement the designation of said expert shall pertain to the governor.

In the formation of the project, articles 93 and 95 of the regulations for the execution of the general law of public works shall be observed in so far as applicable to the case.

ART. 12. Upon the basis of the project the public hearing shall be proceeded with, for which purpose the governor shall have the proper notice inserted in the *Official Bulletin*, fixing a period which shall not be less than eight days for the purpose of hearing objections. Upon the expiration of this period, the governor shall make the declaration of utility, if proper, after hearing the officials and corporations he may deem advisable, and in every case the deputation of the province and the ayuntamiento interested in the execution of the work.

ART. 13. When the work interests two or more towns situated in different provinces, similar procedure shall be observed, and the authorities and corporations who are to take part in the utility proceedings must agree in their resolutions. If such agreement can not be reached, any differences which may arise shall be settled by the minister of the service to which the work corresponds.

ART. 14. The resolutions of the governors in the cases in which the declaration of the public utility of a work pertains to them must always contain the reasons for their decisions, analyzing the objections which may have been made at the hearings and demonstrating whether or not they are proper.

These orders shall be published in the official bulletins of the respective provinces, and an appeal lies therefrom through administrative channels within the period of thirty days.

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ART. 15. If the declaration of utility should be requested by the petitioner of the concession of the work, the person interested shall present to the government, governor, or governors of the respective provinces, according to the cases, the proper project conforming in all points to the prescriptions of article 6 of the regulations for the execution of the general law of public works, with the documents, schedules of charges, bases for their applications, and anything else which may be necessary to give a good idea of the work which it is intended to undertake, the advantages to the general interests and the means counted on to carry it out.

ART. 16. The project presented by the petitioner shall serve as a basis for the public proceedings, which shall take place, as the case may be, entirely in accordance with the provisions contained in the preceding articles with regard to works to be executed with funds of the State, of provinces, or of municipalities.

ART. 17. After a work has been declared of public utility, the proper examination and approval shall be proceeded with. This approval shall be given, according to the cases, by the minister of the service to which the work pertains, by the deputation which is to pay the expenses, or by the governor of the province if the work were municipal; similar formalities being observed to those which are established with regard to this matter in the general law of public works and regulations for its execution.

ART. 18. The following are excepted from the formalities contained in this chapter of these regulations:

1. The works which are in charge of the State and which are executed in accordance with the prescriptions of Chapter III of the law of public works.

2. The works included in the State, provincial, or municipal plans which are designated in articles 20, 34, and 44 of said law.

3. Every work of whatsoever class, the execution of which may have been authorized by a law, or is designated in the special laws of railways, roads, waters, and ports, already enacted or which may hereafter be enacted.

With regard to the declaration of utility of works of urban police and the internal improvement of large towns, the provisions prescribed in Chapter V of these regulations shall govern.

CHAPTER II.—DECLARATION OF THE NECESSITY OF THE OCCUPATION OF REAL PROPERTY.

ART. 19. After a work in charge of the State has been declared of public utility and after the plan thereof has been approved, and after the execution of the same has been decided by the Minister of the proper service, the real properties it is necessary to expropriate for the execution of the work shall be determined.

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The second description of the ground plan which may have been approved according to the procedure prescribed in the foregoing chapter shall serve as a basis for this determination, which second ground plan shall be drafted in the case of this article by the engineer of roads, canals, and ports, or by the architect or technical person to whom, according to the case, the direction, surveillance, and inspection of the work pertains.

The person intrusted with drafting the second ground plan shall inform the governor sufficiently in advance, stating the day on which the work will begin. The governor, as soon as he receives this notice, shall issue the proper orders to the mayors of the municipal districts to which the works pertain, so that they may furnish to the engineers or other persons who are to execute this work the notices and all the assistance which will conduce to a good performance of their duties.

ART. 20. Upon the second ground plan being made, note shall be made of the situation, number, and character of the estates which it may be necessary to occupy in whole or in part, as well as of the names of the owners and their tenants or lessees.

With this data the nominal statements of the persons interested in the expropriation shall be made, which are referred to in article 15 of the law, one statement to be made for each municipal district.

The engineer, architect, or professional person who may have verified the second ground plan shall authenticate the said statements with his signature, and shall forward them to the governor of the province as soon as the work shall have been concluded.

ART. 21. The governor, within the period mentioned in article 16 of the law, shall forward to each mayor the nominal statement which may pertain to him, in order that it may be rectified in the manner stated in the said article.

The mayors, in returning to the governor the corrected statements, shall take special care to state, with reference to the poll, who are the persons who appear as the owners of the estates to be expropriated, as well as any other information which they may have with regard to the places of residence of said owners or their administrators, in order that, in so far as possible, none of the estates included in the statement shall remain without a designation of the owner or of his duly authorized representative, with whom the administration is to conduct the proceedings relating to the expropriation.

ART. 22. The governor, after receiving the statements rectified by the mayors, must revise them to decide the doubtful cases or complete what has not been determined. For this purpose he shall request the information which he may require of the register of property or of other officers, and if after all means have been exhausted the owner of an estate can not be ascertained, or if his whereabouts are unknown, the governor shall proceed to fulfill the provisions contained in the third

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paragraph of article 5 of the law, giving the proper notice to the *promotor fiscal.* The same shall be done in the cases referred to in the second paragraph of the same article.

The registers are obliged to furnish to the governor all the notices which may be necessary to define exactly the legal ownership of each estate.

ART. 23. After the nominal statement of all the persons interested in the expropriation in each municipal district has been definitely fixed in accordance with the provisions of the foregoing articles, the governor, within three days, shall proceed to announce and fix the period in which to object as to the necessity of the occupation, the provisions contained in article 17 of the law being fully observed with regard to these points.

ART. 24. The objections shall be addressed to the mayor of the town in whose district the estates are situate, and may be made verbally or in writing. In the former case, the mayor shall make a memorandum of the objection, which shall be authenticated by the secretary of the ayuntamiento. The objections shall be confined exclusively to the specific object of the proceedings, all those which are directed against the utility of the work being refused.

Within eight days after the expiration of the period for the admission of objections, each mayor shall forward to the governor the proceedings relating to his district, attaching an index of the petitions and memoranda of objections which said proceedings may contain.

ART. 25. After the governor has received the proceedings sent him by the mayors, said authority shall decide, in accordance with the provisons of article 18 of the law, as to the necessity of the occupation, hearing the engineer or architect who is the author of the plan in question and the provincial commission of the deputation.

The resolution of the governor shall be published in the official bulletin of the province, and in addition each person interested shall be individually advised, the appeal referred to in article 19 of the law being allowed thereagainst.

ART. 26. In accordance with the provisions of articles 18 and 25 of these regulations, the governors shall decide as to the necessity of the occupation when the work in question is provincial, in which case the second ground plan and the formation of nominal statements of the owners must be made by the professional person to whom the direction, inspection, or surveillance of the work pertains; and the same shall be done for municipal works, the second ground plan and the statements mentioned being made by the professional persons to whom the draft of the project may have been intrusted.

When the work affects two or more provinces or towns whose municipal districts belong to different provinces, the governor of each shall proceed in person and independently of the others in the prosecution of proceedings of this character, and shall render his decision with regard thereto in the same manner.

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ART. 27. When the work is to be executed by concession in any of the cases provided for in the general law of public works, the concessionaire, before the period when, in accordance with the conditions, he is to begin the works, must make a second ground plan of the works projected. The concessionaire himself must make the nominal statements of the persons interested in the expropriation, which must be transmitted to the governor of the province in the same manner as prescribed in article 20 for the works of the State. After the statements have been received by the governor, all the proceedings prescribed in articles 22 to 25 shall be observed until the final decision declaring the necessity of the occupation.

ART. 28. The prosecution of the proceedings upon the necessity of the occupation of the estates and their final decision shall not be suspended in any case by the measures which, in accordance with article 5 of the law and 22 of these regulations, must be taken to ascertain the owners of the estates who are unknown, or the curators or representatives of incapacitated persons for the purpose of entering into contracts, or if the property is the subject of litigation. Therefore, estates included in these circumstances shall not be considered at once, but decisions must be rendered as to others. With regard to the former, special proceedings shall be instituted as soon as it is known with what persons the expropriation proceedings are to be conducted, or when, in their absence, it has been declared that said persons are to be represented by the *promotor fiscal* of the proper court.

Neither shall the course of the proceedings be suspended on account of the appeals which the owner or owners of some estates may take from the decision of the governor, the steps relating to the expropriation of such estates being pursued in special proceedings as soon as definite decisions are rendered on said appeals.

ART. 29. The survey of the estate or part thereof which is to be occupied, by the execution of a work belonging to each owner, shall be made by experts, in accordance with the provisions contained in articles 20 et seq. of the law and the proper articles of these regulations.

The appointment of experts pertains to the persons interested, and, as representatives of the administration, the governors, and by their express delegation, when they deem it indispensable, the engineers, architects, or other professional persons in charge of the direction, inspection, or surveillance of the works, are understood to be authorized to make said appointments when State, provincial, or municipal works are in question, and the concessionaire or the person duly authorized by him in case of works by concession.

ART. 30. The experts appointed by the parties must include in their statements upon each estate, first, the area to be occupied by the work, for which purpose they shall make the proper measurements on the ground conforming to the description of the ground plan, in which they shall not be permitted to introduce changes whatsoever. The

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measurements must be made in every case under the immediate direction of the representative of the administration or of the assistant or subordinate whom the former may delegate for the purpose under his own liability. In the case of a concession, the direction of this work pertains to the concessionaire or to the person authorized properly by the same; second, the location, character, kind of land, total area, and boundaries of the estate, giving explanations as to the products thereof and the other circumstances which are to be taken into consideration to appraise the value of the same; third, the income from rents according to existing contracts, the tax paid on the estate, the taxable value represented, and the amount of the tax pertaining thereto according to the last tax lists, and fourth, the manner in which the expropriation affects the estate, there being stated, if not entirely occupied, how it is divided by the work and indicating the form and area of the parts which are not to be occupied.

Art. 31. To the information mentioned in the foregoing article shall be attached plans representing the different peculiarities and circumstances of the occupation of the estate. These plans shall be drafted by the experts on the scales indicated in the third paragraph of article 23 of the law. Nevertheless, when the area of the estate is very large in relation to the part of the same occupied with the works, this formality may be waived in so far as the part not occupied is concerned, in which case the experts must make in their statements the proper descriptions to supply the absence of the plans. When in the judgment of the experts, and all of them consenting, they should agree, nevertheless, to represent the part not occupied, notwithstanding the area thereof, the proper plan may be made, although on a scale smaller than that fixed by law, in order that the size of the plans may not be out of proportion. If the expert of the owner, against the judgment of that of the administration, should consider it advisable to make a plan of the unoccupied part of the estate, he may do so; but it shall be understood that the expense incurred thereby shall be for the account and risk of the said expert or the person interested whom he represents.

In any case the part to be occupied must necessarily be included in plans on the scale prescribed by law, stating accurately all the dimensions in order to give a clear idea of the area of the estate or the part thereof to be expropriated.

Art. 32. The experts appointed by the administration as well as by the persons interested to perform the work mentioned in the two preceding articles, must possess the conditions and qualifications required by article 21 of the law. Consequently, in order to be appointed an expert, it is necessary to possess a diploma in one of the following professions: With regard to rural property; engineer of roads, canals, and ports; engineer of forests; agricultural engineer, architect, assist-

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ant of public works, agricultural expert, master of works, surveyor, director of roads. With regard to urban property, when the buildings are not of a public character: architect, engineer of roads, canals, and ports, industrial engineer, master of works, assistant of public works. With regard to urban property which has a public character only such persons can perform the work having the titles of architect, engineer of roads, canals, and ports, or industrial engineer. In case that it is desired to expropriate an entire or part of a mining property, only mining engineers can act. When it is intended to expropriate an estate of a mixed character a mixed commission must be appointed to appraise it.[1]

ART. 33. For the appointment of experts by the parties interested and by the representatives of the administration the rules prescribed in article 20 of the law shall be observed—it being taken into consideration that, according to the provisions of the second paragraph of article 21, it is presumed that every owner who should not make the appointment of an expert within the period of eight days after being notified of the appointment of an expert by the representative of the administration or by the concessionaire, in a proper case, agrees to said appointment; as well as he who shall appoint an expert in contravention of the provisions of the said article 20, and he who shall appoint a person not possessing the requisites of the preceding article of these regulations.

ART. 34. The mayor of each municipal district shall inform the governor of the province of the appointment made by the respective owners.

The governor shall examine the statements received from the mayors, and after assuring himself as to whether the experts appointed possess the qualifications prescribed by law, he shall forward them to the representative of the administration or to the concessionaire of the work.

The governor, in sending these statements, shall state which are the experts of the parties whose appointment is to be accepted, and which are to be eliminated on account of not possessing the legal qualifications, as well as the estates whose owners may not have appointed an expert within the period fixed; all for the purpose that in the proceedings relating to the estates included in any of these cases, the expert designated by the administration may act in the name of both parties.

ART. 35. After the experts who are to execute the operations relating to the estates to be expropriated have been appointed in accordance with the provisions contained in the preceding articles, the representative of the administration or concessionaire of the work shall order

[1] This article is inserted as amended by the Royal Decree of July 4, 1881.

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that said work be done in accordance with the provisions of article 22 of the law, there being drafted for each estate a statement containing the information mentioned in article 30 of these regulations.

If on the day set for a survey of the estate the expert of its owner should not appear to perform the work, said work shall be done by the expert of the administration, it being understood that the owner is obliged to agree to what said expert may decide. A case of sickness is excepted, when the person interested will be allowed five days to make the appointment of another expert without admitting any extensions or objections.

ART. 36. The representative of the administration or concessionaire in a proper case, shall collect by municipal districts all the declarations corresponding to each work or branch thereof, and shall make a detailed and correlative report of the estates to be expropriated, stating for each one the circumstances which appear in the respective declarations. This statement shall be signed by all the experts who may have taken part in the declarations.

The right is reserved to the experts to attach to the report mentioned in the foregoing paragraph the remarks which they may consider advisable to support the rights of their principals, which remarks must always be communicated to them in order to give a clear idea of the bases therefor.

In the same manner the expert of any individual may indicate in these remarks whether in case of the nonoccupation with the works of the entire estate of his principal, it would suit him to alienate the entire estate or retain the part not to be occupied, giving the reasons for his opinion in the first case.

The remarks referred to in the foregoing paragraphs shall be attached to the report mentioned in the first paragraph of this article.

ART. 37. The representative of the administration or the concessionaire of the work shall forward to the governor of the province the statements mentioned in the foregoing article, making a full report thereon as well as upon the remarks of the experts and their conduct.

To each statement shall be attached the account of the costs of all kinds of the operations, including the fees of the experts, for the purposes of the provisions of the first paragraph of article 25 of the law. The expenses referred to in the second paragraph of article 31 of these regulations, however, are excepted.

The governor, within a period of fifteen days, shall decide, in view of the reports of the representative of the administration referred to in the first paragraph, upon all doubtful or undetermined cases which may occur in the proceedings.

Said authority shall likewise decide as to the total occupation of an estate, when only a portion thereof may be necessary for the works, taking into consideration what may be most convenient for the admin-

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istration or of the concessionaires, in a proper case, the statement upon this point of the expert of the person interested and the report thereon of the representative of the administration or concessionaire.

ART. 38. The orders of the governor mentioned in the third paragraph of the foregoing article shall be communicated to the parties, the private individuals and the concessionaires of the works who consider themselves prejudiced being permitted to appeal therefrom within a period of fifteen days from the date of the service of notice, to the Government, which shall decide definitely and without further appeal through the Minister of the service to which the work belongs.

ART. 39. The following rules shall be observed for the notifications to which the various articles of this chapter refer.

When the persons interested should reside in towns in the municipal districts within which the estates are situate, a notification served upon them, or by a writ left at their residence by the secretary of the municipal council before two witnesses, shall be considered valid. If there should be no one in the residence of some interested person to receive the writ, legal requisites shall be complied with by its delivery to the syndic of the municipal council, the proceeding being published by an edict which shall be posted at the customary places in the locality.

With regard to absent or transient owners, said proceedings shall be conducted with their administrators, attorneys in fact, or representatives duly authorized.

If one or more should not have attorneys or administrators in the town in which the estates are situate, they shall be called upon by edicts to designate them, said edicts being published in the official newspapers and a period being fixed for the appointment, which shall not be less than eight nor more than twenty days, it being understood that should the appointment not be made before the expiration of the period, any notification addressed to the syndic of the ayuntamiento shall be considered valid.

CHAPTER III.—APPRAISAL OF ESTATES SUBJECT TO FORCIBLE EXPROPRIATION.

ART. 40. After the area and other conditions of the estate or part thereof which is to be expropriated has been exactly determined according to the procedure prescribed in the foregoing chapter, its appraisal shall be proceeded with in accordance with the provisions of articles 26 et seq. of these regulations.

ART. 41. The expert of the administration, or of the concessionaire in a proper case, shall prepare for each estate or part thereof which is to be definitely occupied a statement of valuation in which he shall state the price which in his opinion should be offered the person interested

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for the acquisition of the real property and for the losses and damages caused by the occupation, it being understood that the owner is free from expenses of any kind whatsoever.

In the statement of valuation the expert signing the same must state the reasons upon which he bases his offer, taking into consideration all the circumstances contained in the declaration of the experts and other information mentioned in articles 30, 31, and 36 of these regulations, as well as the damages which may be caused or the benefits which may accrue to the part of the estate not occupied by reason of the expropriation.

ART. 42. The representative of the administration or concessionaire, as soon as he receives the statements of valuation prepared by the expert, shall forward the same to the governor in order that through this authority they may be delivered to the respective persons interested, of whom a receipt shall be demanded, upon which they shall state over their signatures on what date these documents were delivered to them.

If within three days the person interested should not be found, the statement of valuation shall be inserted in the edicts which shall be published in the official newspapers and posted in the customary places for the period mentioned in article 39.

The governor shall in the same manner inform each land owner of his obligation to answer within the period of fifteen days, counted from said date, accepting or refusing clearly and fully the offer made him, as well as of his obligation to present in the latter case and within the same period the statement of valuation mentioned in the second paragraph of article 27 of the law.

ART. 43. In case of the acceptance of the owner, the latter is obliged to vacate the estate or part of the estate mentioned in the statement of valuation, without at any time being allowed to interpose any objection, at such time as the administration or the person acting in its stead may consider necessary or convenient for the execution of the works, after the payment in every case to the person interested of the amount fixed in the aforementioned statement.

If the owner should not answer within the period fixed, it shall be presumed that he accepts the amount offered, and the administration, or the person acting in its stead, shall have the right to occupy the estate in the manner mentioned in the foregoing paragraph.

In either case the period for the delivery of the price referred to cannot exceed six months, the owner being permitted to dispose of his estate if upon the expiration of this period the amount of the valuation should not be delivered to him.

ART. 44. When the owner refuses the offer of the administration, he shall be obliged to present to the governor, within the precise period of fifteen days to which article 27 of the law refers as well as article 42 of these regulations, the statement of the valuation of the

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estate subscribed by his expert, in which the reasons which served as a basis for the valuation shall be stated, taking into consideration all the circumstances which are mentioned in detail in the first paragraph of article 28 of the said law. The governor shall forward these statements to the administration or in a proper case to the concessionaire.

At the same time the expert of the administration shall prepare for the same estate another similar statement as soon as he shall have been notified by the governor of the refusal of the owner. These statements shall be delivered directly by the expert to the representative of the administration, or to the person acting in his name.

The fees earned by the experts in these valuations, as well as the cost of the stamped paper on which the statements are to be drafted, must be paid respectively by each of the persons interested.

ART. 45. The valuation mentioned in the foregoing article shall be prepared, with regard to their form, in accordance with the forms which will be published at the proper time, together with the regulations, and care shall be taken to add thereto the 3 per cent prescribed by article 36 of the law.

ART. 46. After the statements of valuation referred to in the foregoing article have been collected by the representative of the administration or by the person acting in his stead, said representative shall examine and ascertain whether they are irregular or whether there exist any statements which do not conform with the statements contained in other documents previously formulated. Afterwards he shall forward them to the governor with his report and reasons upon said points, indicating whether the experts have incurred any liability, and mentioning furthermore the estates with regard to which the total amounts of the valuations of both experts agree and the estates with respect to which this conformity does not exist.

ART. 47. If the total amount fixed for the purpose of expropriation by each one of the experts should be the same, the value of the estate shall be considered as fixed at said amount, as prescribed by the third paragraph of article 28 of the law, and in such case the administration or the person acting in its stead shall consider itself authorized to occupy it, as in the second paragraph of article 26 of the said law and article 43 of these regulations; should the appraisals not be the same the governor shall order that the respective experts meet to see if they can agree upon the appraisal, which must take place within a period of eight days, prescribed in the fourth paragraph of the said article of the law.

If an agreement is reached, the valuation of the estate shall be fixed in accordance therewith, and each expert must give immediate notice thereof to the person he represents. The administration or the person acting in its stead may also in such case occupy the estate whenever deemed proper after the payment of the amount fixed in the valuation.

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ART. 48. In case of disagreement of the experts, the latter, in communications signed by both, and within the period of eight days, which is fixed in the fourth paragraph of article 28 of the law, shall give notice thereof to their principals. In such case, and when the experts do not make any statements, upon the expiration of said period, whether the meeting mentioned in the foregoing article has or has not been held for any reason whatsoever, the representative of the administration shall give notice of the fact to the governor, in order that the proceedings may be continued in accordance with the provisions of articles 30 et seq. of the law.

Nevertheless, according to the provisions of the first paragraph of article 29 of the said law, the administration or the person acting in its stead may occupy the estate whenever it deems it proper after the deposit of the amount fixed in the appraisal made by the expert of the owner, which deposit shall be made with the formalities established in the laws in force and after the proper prescriptions which the governor may issue for the purpose.

The owner shall be entitled to interest at the rate of 4 per cent per annum upon the amount deposited for the time intervening between the date of the occupation until he receives the amount finally fixed as the value for the expropriation.

ART. 49. As soon as the governor is aware, in the manner stated in the foregoing article, of the disagreement of the experts, said authority shall inform the judge of first instance of the district to which the property belongs of said disagreement, and he shall appoint a third expert, in accordance with the provisions of articles 30 and 31 of the law, and the prescriptions of the law of civil procedure.

The third expert must possess the qualifications which, according to the kind of estates to be appraised, are prescribed by article 32 of these regulations, and no objection whatsoever shall be allowed or admitted with regard to his appointment.

ART. 50. The governor of the province shall collect while the judge is making the appointment of the third expert, the data mentioned in article 32 of the law, and any other data which he may deem proper, applying for the purpose of obtaining the same to the owners of the estates, to the offices of the public treasury, to the register of property, and in general to all official bureaus which can furnish the same.

ART. 51. The third expert shall discharge his duties strictly in accordance with the provisions of article 33 of the law, and taking into consideration all the data mentioned in the foregoing article, for which purpose the governor must deliver them as soon as collected.

ART. 52. The record of proceedings referred to in articles 33 and 34 of the law shall be composed for each of the estates with regard to which there may have been a disagreement in the valuation:

1. Of the declarations of the experts which contain the data men-

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tioned in articles 30 and 31 of these regulations, as well as the statements referred to in article 36, with the remarks which may have been made by the experts and the reports thereon by the representative of the administration, in accordance with the provisions of article 37.

2. Of the offer which may have been made to the owner for the acquisition of his estate, according to the statement of valuation prepared by the expert of the administration, in accordance with the provisions of article 41 of these regulations.

3. Of the statements of valuation prepared by the experts of the parties, in accordance with the provisions of articles 44 and 45, in view of the refusal of the owner to accept the offer made by the administration.

4. Of the data mentioned in article 32 of the law and the statement of valuation prepared in view thereof by the third expert.

5. Of all other data, notices, and documents which said authority may deem proper to mention for a better understanding of the matter.

ART. 53. The governor, taking into consideration what may appear from the proceedings, after summarily hearing the persons interested if he deems it necessary, and especially the permanent commission of the provincial deputation, shall determine, within the period and in the manner prescribed in article 34 of the law, the amount to be paid the owner in case of disagreement in the valuation of the estate.

The decision of the governor must state the reasons therefor, and shall contain a clear and precise statement of what appears from the proceedings, and of the reasons and foundations which serve as a basis for the valuation.

This decision shall be communicated to the owner and to the representative of the administration or concessionaire.

ART. 54. The persons interested, within the period of ten days, counted from the date of the notification of the resolution of the governor, must answer, stating whether they accept the decision or not.

In the former case, the decision accepted by the parties shall be final, and shall be published in the official bulletin of the province, as prescribed by article 35 of the law.

In the latter case, the owner may make use of the right of appeal by administrative channels to the minister of the service to which the work pertains, within the period of thirty days granted him by the first paragraph of the said article 35. On his part, the representative of the administration or concessionaire in a proper case, may also apply to the minister within a similar period, requesting the review of the decision of the governor.

If any of the parties should permit the period fixed to expire without making use of his rights, it shall be understood that he accepts the decision rendered by the said authority.

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ART. 55. The governor, represented by the proper minister, shall decide upon the appeals mentioned in the foregoing article within the period of thirty days and the royal order issued shall close the administrative proceedings.

Said royal order shall be communicated to the parties, and, if they should accept it, it shall become final and shall be published in the official bulletin of the province.

ART. 56. An administrative appeal lies from the decision of the Government within the period and for the causes mentioned in the last paragraph of article 35 of the law.

The claims made in the latter case by the appellants must determine exactly the amount which is considered a just price for the estate to be expropriated, and which constitutes therefor the lesion the curing of which is requested.

The decision of the contentions court (tribunal contencioso) rendered in accordance with the laws which are in force on the matter, puts an end to the appraisal proceedings; and after being published in the *Gaceta de Madrid* and in the official bulletin of the province it is binding upon the persons interested.

ART. 57. The notices which in all the cases referred to in the various articles of this chapter should have to be served upon the owners of the estates, upon their experts, and upon the concessionaires of the work in a proper case, shall be made in accordance with rules similar to those prescribed in article 39 with regard to proceedings as to the necessity of the occupation of the estates mentioned.

ART. 58. The course of the general proceedings in each district shall never be suspended by the objections which may be made by the owner of an estate, or the concessionaire of the works, in cases in which he makes use of the right of appeal granted him from administrative decisions in various articles of this chapter, and, therefore, the proceedings relating to the estates of the other persons interested shall follow their ordinary course, without prejudice to the separate proceeding relating to the estate of the appellant when the proper decision may have been rendered upon his objection.

CHAPTER IV.—PAYMENT AND TAKING OF POSSESSION OF EXPROPRIATED ESTATES.

ART. 59. After the proceedings relating to the valuation of estates which are to be expropriated for the execution of a work under the charge of the State have been closed, according to the rules prescribed in the foregoing chapter, the governor of the province shall forward the valuation proceedings to the proper department.

The minister shall take the proper steps in order that the proper "Ordenación de Pagos" may issue the respective warrant for the payment of the sum to which the expropriation amounts of the estates

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included within the municipal district to which the proceedings relate, with the exception of those the amount of which may have been paid on account of the urgency of the occupation, either with the agreement of the persons interested in the cases mentioned in articles 43 and 47 of these regulations, or by the deposit referred to in article 48 on account of this consent not having been given.

ART. 60. In the issue of the warrants mentioned in the foregoing article, the rules established in the general accounting law and in the regulations and instructions issued for the execution thereof shall be observed.

ART. 61. After the warrant for the payment of the expropriations in a municipal district have been received by the province, and after having been collected by the disbursing officer in whose favor it was drawn, the governor shall fix a day on which the payment is to be made, which shall be announced in the official newspaper of the province a sufficient period in advance, notice in advance being also given to the mayor of the corresponding district, to whom the list of persons interested shall be sent.

The mayor shall address these persons interested individually, informing them of the day, hour, and place which may have been set for the payment.

ART. 62. Upon the day and hour and at the place designated the mayor, the representative of the administration, or the delegate authorized for the purpose by the said administration, the paymaster, the secretary of the ayuntamiento, and the persons interested who may have answered the call shall meet, and the payment of the amounts stated in the proceedings shall be proceeded with in the order in which said interested persons appear in the list transmitted by the governor.

The payment shall be made in coin and to the persons who may be the recognized owners of the expropriated estates according to the provisions of articles 5 and 6 of the law, no other persons being permitted to appear on behalf of the persons interested unless they possess a duly authorized power of attorney, either general or express for this case.

The mayor shall authenticate with the seal of his office the signatures of those who receipt the respective valuation statements, and shall enforce a strict observance of all the provisions of article 38 of the law.

ART. 63. None of the persons interested shall be permitted to make any objections or remarks upon signing the receipt for the amount which may be due them. This receipt, therefore, must appear full and clear upon the respective statement. If some private individual should have any statement to make, the payment of his expropriation shall be suspended, there being reserved to him the right to make such objection to the governor as he may consider proper.

ART. 64. Doubts which may arise at the time of payment with regard

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to any of the incidents thereof shall be decided by the mayor after hearing the representative of the administration, and reserving to those who consider themselves injured by the decisions of said authorities the right to appeal from the same to the governor of the province.

ART. 65. After the payment, the secretary of the ayuntamiento shall prepare a memorandum of all the incidents which may have taken place, as well as of all the circumstances mentioned in article 39 of the law, by virtue of which payment for one or more of the estates included in the proceedings may not have been made.

The memorandum shall be signed by the mayor, the representative of the administration, the disbursing officer and the secretary of the ayuntamiento, and shall be forwarded by the former to the governor with the proceedings which may have served as a basis for the payment. The representative of the administration shall forward at the same time to the said governor the copy of all the valuation statements mentioned in article 41 of the law for the purposes prescribed therein.

The copies of the statements referred to in the foregoing paragraph, after being authenticated by the governor, shall be considered as authentic documents for the purposes of their inscription in the register of property, according to the provisions of article 8 of the mortgage law, and the registers shall have, therefore, the duty to record them, even though no public instrument should have been executed for the corresponding transfers.

ART. 66. The disbursing officer shall take charge of the amounts which remain without application for the reasons mentioned in article 39 of the law, and he shall cover them within the period of eight days after the payment into the treasury of the economic administration of the proper province, receiving the proper deposit receipt therefor.

Said amounts shall remain at the disposal of the governor in order that they may be delivered to the respective persons interested as the questions which caused their deposit are decided.

ART. 67. When, by virtue of the provisions of articles 43 and 47 of these regulations, it should be advisable for the administration to occupy an estate before the conclusion of the expropriation proceedings, when the amount of the indemnity to be paid has already been determined, the governor, at the instance of the director or person in charge of the inspection of the works, shall address the minister of the proper service requesting that a warrant be issued for the corresponding amount.

This warrant shall be drawn in favor of the disbursing officer, who, after collecting the amount thereof, shall deliver without delay the sum to the respective owner, taking a receipt from the latter, which shall appear on the statement of valuation pertaining thereto.

The disbursing officer may indorse the warrant in favor of the owner, observing the same formalities with regard to the receipt.

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If the occupation of an estate should be advisable without the amount of the expropriation having been determined in a definite manner, according to the provisions of article 48 of these regulations, the governor shall inform the minister, in order that the proper warrant may be issued for the amount which may appear in the valuation of the expert of the owner, or, in his absence, the expert of the administration.

In the latter case the said warrant shall be drawn in favor of the disbursing officer, who, as soon as he collects it, shall deposit the amount in the treasury of the economic administration of the province, in accordance with the accounting instructions which are in force at the time these operations take place.

ART. 68. The payment of the expropriation of any estate which may have been occupied, in view of the amount of the valuation made by the expert of the owner, or the one of the administration in the absence of the former, in accordance with articles 48 and 67 of these regulations, shall be made as soon as a final decision is rendered in the litigation, either in the administrative or in the contentious proceedings. The governor shall then order the deposit, in order to deliver to the person interested the portion which may pertain to him, covering the balance, should there be any, into the proper treasury, all with the formalities which are prescribed in the accounting regulations of the department to which the work pertains.

ART. 69. The governor shall contribute by all the means in his power to facilitate the operations mentioned in the foregoing articles, in order that the payment of the amounts of the expropriation may take place in the shortest period possible, and shall adopt the measures which may conduce to the custody and safety of the funds destined to the said payment.

ART. 70. After the payment of the expropriation has been made in any of the cases mentioned in the law and in these regulations, or after the deposit referred to in articles 48, 67 and 68 of the same, the administration shall at once enter into the possession of the expropriated lands or estates, which act shall take place before the mayor of the respective jurisdiction.

ART. 71. If during the execution of the works the necessity of occupying a larger area than that allowed in the statement of valuation should be recognized, payment shall be made for the part which may have been occupied, in accordance with the provisions contained in the second and third paragraphs of article 42 of the law.

ART. 72. If the work which required the expropriation should not be executed, the governor shall inform the owner of the expropriated estate thereof in order that, within the period fixed in the second paragraph of article 43 of the law, he may state whether he wishes to recover the estate, returning the amount which may have been paid for the same.

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In an affirmative case the return shall be made after the payment of said amount in the treasury of the economic administration of the province.

In a negative case or in case the period fixed should expire without an answer being made, the State may dispose of the property as it may deem fit.

ART. 73. A similar procedure shall be observed when some parcel should remain over after the execution of the work; by parcels being understood in these cases, those which are defined as such in article 44 of the law, and taking into consideration, in a proper case, the exception made in the second paragraph of article 43.

A similar procedure shall be observed when the estates should remain without application on account of the termination of the object of the expropriation.

ART. 74. Rules identical, in so far as possible, and in other similar cases, to those established for works under the charge of the State by articles 61 and 73 of these regulations shall be applied to the payment and the taking of possession of the real property when works in charge of the deputations or ayuntamientos are in question, without prejudice to the observation of the proceedings provided for by the laws in force on provincial and municipal accounting.

ART. 75. The said articles 61 and 73 are also applicable to works executed by concession, taking into consideration the modifications which it would be necessary to introduce on account of the concessionaire being the person who is to make the payments and the one to occupy the expropriated estates, subrogating himself to the administration in all the rights and obligations pertaining to the same.

ART. 76. With regard to the notifications which it might be necessary to make to the different persons interested for the purpose of properly executing the provisions of this chapter, the prescriptions of articles 36 and 57 of these regulations shall be observed.

The provisions of article 58 shall also be taken into consideration in order not to cause a suspension of the proceedings in case of the objection of some owner.

CHAPTER V.—EXPROPRIATIONS NECESSARY FOR THE INTERIOR IMPROVEMENT OF LARGE TOWNS.

ART. 77. The expropriations which may be necessary for the improvement, sanitation, and widening of streets in towns having at least 50,000 inhabitants, shall be governed by the provisions of section 5, Title II, of the law, and the prescriptions of this chapter of these regulations.

ART. 78. When the ayuntamiento of any of the towns referred to in the foregoing article should desire to execute works which embrace the three conditions of improvement, sanitation, and widening of

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streets for one of the purposes mentioned in article 46 of the law, it shall issue orders that its municipal architect or the technical person to whom it may consider proper to intrust this work proceed to make a study of the corresponding project.

ART. 79. The project must contain the documents which are generally required for all public works, which are the following:

1. An explanatory memorial.
2. Plans.
3. Document of technical conditions.
4. Estimate of cost.

In the explanatory memorial a detailed description shall be made of the works planned, justifying their necessity for the purpose of their construction, as well as the necessity for the occupation of the estates which it would be requisite to expropriate in order to execute the same.

In the plans the streets, squares, and alignment projected shall be precisely fixed, specially marking the lands or lots which it would be necessary to occupy for the realization of the project. There shall likewise be marked on said plans the estates which it would be necessary to expropriate, not only for the widening of streets but also for the formation of lots regularly laid out in lateral zones parallel to said street which it is necessary to expropriate, each of which must have the width of the street planned; but always within the maximum limit prescribed by article 47 of the law, as also those which may be necessary for the formation of blocks and which are subject to forcible alienation, according to the provisions of article 48 of the said law.

The document of conditions shall contain the description necessary to give a complete idea of the works and the prescriptions and requisites which their execution may require.

The estimate of cost shall include, properly classified, the sums which may be necessary to carry out the work.

With regard to the form of each of these documents, the forms prescribed by the department to which the civil constructions pertain shall be adhered to.

ART. 80. The project must furthermore contain the establishment of the urban public services over the entire area included in the works, the plans for the fronts and other details to which the new buildings which may be erected on the lots must conform.

ART. 81. There shall be attached to the project an estimate of the sum required, according to its author, for the expropriations which may be considered necessary, and, in a proper case, an estimate of the amount which may be received from the sale of the lots which may result on the expropriated area adjoining the public road.

ART. 82. The project, prepared in accordance with the terms prescribed in the preceding articles, shall be forwarded to the governor

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of the province in order that it may serve as a basis for the proceedings on the declaration of public utility.

The governor shall order that the proper edicts be inserted in the official bulletin and in the *Gaceta de Madrid*, announcing that the question is the declaration of public utility of the work to which the project refers, and fixing a period not less than ten days for the admission of objections.

ART. 83. Upon the expiration of the period fixed, the governor shall forward with his own report the proceedings to the minister under whose charge civil constructions may be, whose duty it is to make the declaration of public utility in accordance with the provisions of the second paragraph of article 46 of the law. This declaration shall be made, if proper, after hearing the technical corporations which the minister may deem fit to consult, and in important cases the council of state. The commission of historical and artistic monuments must also be heard if among the buildings to be expropriated there should be any which has such character or which should contain works of recognized merit.

The declaration must in every case be made by a royal decree adopted by a council of ministers, the basis for the resolutions being duly explained.

ART. 84. After the declaration of utility has been made, a resolution shall be adopted as to the approval of the project. This approval pertains to the Government, which shall grant it in a proper case, after the reports of the technical corporations which may be proper, by means of a royal decree countersigned by the minister of the service to which the work corresponds.

ART. 85. After the works have been declared of public utility, the project approved and its execution ordered, a ground plan shall be made thereof and the nominal statement of the persons interested in the expropriation shall be prepared, which shall be duly rectified in order that the persons with whom the administration is to conduct the proceedings may be properly known.

The provisions contained in articles 19 to 22 of these regulations shall be observed in all these operations.

ART. 86. Thereafter the proceedings on the necessity of the occupation of the estates to be expropriated shall be had. For this purpose the governor shall proceed within three days from the day he receives possession of the corrected statement of the persons interested in the expropriations to make the proper announcement and fix the period within which to object.

The objections shall be made to the mayor, and must be in writing, who shall afterwards forward them to the governor who shall decide as to the necessity of the occupation, after a report from the author of the project, the ayuntamiento, and the provincial commission of the deputation.

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The declaration of the governor shall be communicated to the respective persons interested, and an appeal lies therefrom to the proper minister, who shall definitely decide, the provisions of article 19 of the law and articles 23, 24, and 25 of these regulations being observed in all these proceedings.

The provisions of article 28 shall also be observed in order not to hinder the proceedings, when the person interested in the expropriation of an estate should not be known at the time the proceedings are to be instituted.

ART. 87.[1] After the necessity of the occupation has been declared the parties interested shall proceed with the appointment of the experts who are to represent them in the surveys and collecting of data necessary for the appraisal, which appointment can be given only to such persons as possess a title of architect, engineer of roads, canals, and ports, or industrial engineer, or, otherwise, a builder or assistant builder. When the estate is of a mixed character it must be appraised by a mixed commission.

The experts shall survey the estates which are to be occupied and shall state in their declarations all the circumstances of the estate, in accordance with the provisions of article 30 of these regulations. In such cases plans shall be made of said estates upon a scale of 1 to 100, or upon a larger scale when considered necessary for greater clearness, it being understood that the plans must always include the entire estate in question, even though the expropriation should affect a part thereof only.

The declarations of the experts shall be collected by the representative of the administration, and shall be forwarded to the governor with the expense accounts, including the fees of the said experts.

In all the proceedings mentioned in the preceding paragraphs, the provisions of articles 33 to 37 of these regulations shall be observed in so far as applicable and not modified by the corresponding articles of this chapter.

ART. 88. After the portion of the estate to be occupied has been determined, the expert of the administration shall prepare a statement of valuation in which, taking into consideration all the circumstances which appear in the statements of the experts in accordance with the provisions of article 23 of the law and the corresponding ones of these regulations, the highest amount which in the opinion of the said experts can be allowed to the owner in payment of all claims, free from all expenses, shall be stated. In this statement the expert signing the same shall duly state the reasons upon which he bases his valuation.

The statement mentioned in the foregoing article shall be submitted for the acceptance of the owner, who shall state whether he does or

[1] This article is inserted here as amended by the royal decree of July 4, 1881.

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does not agree to accept the amount offered, the provisions of articles 41, 42, and 43 of these regulations being observed in all these proceedings.

ART. 89. If the owner should refuse the offer of the administration he shall present another statement of valuation made by his expert, and the one representing the ayuntamiento must do likewise. These two statements shall afterwards be compared, and if their totals are the same the valuation of the estate shall be fixed thereat.

Should the total amounts which appear on the statements not coincide, the proper judge shall appoint a third expert, who shall make his declaration, taking into consideration all the data mentioned in article 32 of the law, and the governor shall render a decision with his reasons, which shall be communicated to the parties in order that they may make use of the right of appeal granted them by law.

ART. 90. In the proceedings mentioned in the foregoing article the procedure prescribed by articles 44 to 56 of these regulations shall be observed, taking into consideration:

1. That the documents which relate to the valuation of an estate subject to forcible alienation on account of its having a frontage or openings upon the yards, streets, or parts of streets which must be removed for the proper laying out or formation of blocks, in accordance with the project approved, the easements or lighting privileges or views must be taken into account as if they faced upon a public road.

2. That in order to appraise the value of the estate, no improvement can be considered which was made after the initiation of the project.[1]

3. That the expert of the owner must indicate when the entire estate should not be subject to expropriation, whether the alienation of the rest would be advisable for the owner, or whether he should retain it in accordance with the provisions of the paragraph of article 23 of the law.[2]

4. That these appraisals must be absolute and there must be included therein, therefore, the annuities, ownerships, incumbrances, and easements thereon of all kinds affecting the right of ownership directly or indirectly, so that after the expropriation of an estate has taken place said charges or incumbrances can not revive for any reason whatsoever with regard to the new lots which may be formed.

5. That the ayuntamiento may at once occupy the estate from the moment it pays to the owner the amount of the expropriation when said amount has been determined, and, otherwise, upon the deposit of the amount stated in the declaration of the expert of the person interested or that of the administration, in his absence.

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[1] Not after the *initiation* but after the *definite approval* of the project is understood, according to the royal order of April 28, 1883.

[2] What paragraph is referred to is not stated.

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ART. 91. The payment for and taking of possession of the said estates shall be made by the ayuntamiento, subject to the laws and instructions upon municipal accounting at present in force, or which may be in force when said proceedings are held, which shall conform in so far as applicable to the provisions of article 4 of these regulations.

ART. 92. After the ayuntamiento has paid or deposited the value of the expropriations which are comprised in the project, the demolitions which may be necessary to carry them out shall be proceeded with, in a proper case, marking off the blocks which may have been planned adjoining the public road.

The lots which constitute the blocks mentioned in the foregoing article shall be sold by the ayuntamiento at public auction, in accordance with the decree of February 27, 1852, and the instructions which are in force as to its application, always after the documents of conditions which will have to be prepared for the purpose by the municipal corporation with the approval of the governor or of the government, if proper.

In said conditions it must be specifically stated that the new buildings must conform to the project approved, and that upon the sale by the ayuntamiento of the lots referred to in the foregoing paragraphs exemption is granted from the payment of the tax on property rights and transfer of property, corresponding to the transfer of ownership of the said lots.

An express condition in these sales shall also be the period for the beginning and completion of the buildings, no extension in the execution thereof being permitted. Noncompliance with this provision shall always carry with it the reversion of the lot to the ayuntamiento with the loss by the purchaser of the sum he may have paid therefor.

ART. 93. The ayuntamientos may execute the works referred to in this chapter either by administration or by contract, the provisions of these regulations being observed, as well as the provisions in force on public works, and, in the latter case, the provisions of the decree upon contracts for public services and instructions for its execution.

Contracts in a proper case shall be let only for the works of demolition, removal of earth for laying out the lots, and the establishment of urban public services, the estimates made for these objects serving as a basis for the auction. The expropriations and expenses of the same shall be borne by the ayuntamiento, which reserves the ownership of the lots laid out for the sale, as prescribed in article 92.

ART. 94. The ayuntamientos may also execute works of this character for improvement, sanitation, and the widening of streets of towns by means of concessions to private individuals or duly organized companies. In such cases the concessionaire shall subrogate himself in all the rights and obligations which pertain to the latter. Said concessionaire binds himself therefor to pay the expropriations, to execute the

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demolitions which may be necessary to establish the urban public services of all kinds and to lay out the lots which may result, all strictly in accordance with the project prepared by the ayuntamiento and approved by the proper person.

In compensation for the expense of the services and works, the concessionaire shall become the owner of the land which it may not be necessary to occupy for the public road, and he may unrestrictedly alienate the same without any other conditions being imposed but a strict observance in the formation of the blocks and lots, as well as in all that relates to new buildings, of the provisions of the project, the law, and these regulations.

ART. 95. When the ayuntamiento considers the granting of a concession of this character to be advisable, upon a project ordered prepared and the cost of which was defrayed by the municipal corporation, the granting of the concession shall be made by the ayuntamiento, and always at public auction.

The bidding shall be upon the value given to the lots laid out after the works of the project have been executed, and after deducting from said value expenses of all kinds which may be considered necessary in order to complete the same.

ART. 96. In order to hold the auction prescribed in the foregoing article, the ayuntamiento shall order that the author of the project prepare, before anything else, a calculation of the value of the lots, which is to serve as a basis for the bidding.

This calculation shall contain, in the first place, the amount which, according to the estimate of the author of the project and taking into consideration all the circumstances and conditions in which the different partial lots may remain, it is believed that the entire area available for new buildings is worth after the work of the demolition of the buildings expropriated and the laying out of lots.

There shall be deducted from the sum mentioned in the preceding paragraph:

1. The cost of the study of the projects and the cost of the copies for the proceedings.

2. The sums which it is calculated are necessary for the payment of the expropriations and the expenses inherent thereto for any reason whatsoever.

3. The calculated cost for the works of demolition of buildings, it being considered that the material which can be used from said demolition is to remain the property of the concessionaire.

4. The estimated cost of the removal of earth and other work which may be necessary for the leveling of the road and the establishment of all public and urban services, as well as for the formation and marking off of lots.

5. All other expenses which may arise in connection with a proper realization of the project.

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To the sum of the calculated expenses, in accordance with the preceding numbers, shall be added 15 per cent to meet the cost of direction, administration, advance of capital, and industrial benefit.

ART. 97. The amount which may result from the calculation referred to in the foregoing article for the value of the alienable lots shall serve as a basis for the auction, and the amount, increased in a proper case, shall be paid to the ayuntamiento by the private individual or company whose bid is accepted.

In addition the concessionaire will be obliged to pay to the ayuntamiento the sum which appears in the said calculation as the cost of the project and of the copies necessary in the proceedings.

ART. 98. Prior to the public sale a document of private and economic conditions shall be prepared by the ayuntamiento, in which shall be stated:

1. The deposit required of persons who desire to take part in the bidding. This deposit shall be 1 per centum of the amount calculated for the payment of expropriations and the cost of the works, and shall be returned to all the bidders, excepting the one whose bid was accepted, upon the day following the public sale.

2. The period within which the contract is to be elevated to a public instrument, under the penalty of the loss of the deposit mentioned in the foregoing article.

3. The bond to be given by the concessionaire upon the execution of the instrument to answer for the fulfillment of his obligations. This security shall be 10 per cent of the amount calculated for the payment of expropriations and the execution of works of all kinds. The part of the said security which corresponds to the expropriations shall not be returned until the concessionaire shows that he has made all the payments, and that the last proceedings prescribed in the law and these regulations have been fulfilled. The part which pertains to the works shall be returned upon the conclusion of the same, and after they have been received by the technical person in charge of the inspection of the works.

4. The date when the concessionaire is to begin or terminate the work and the new buildings specified in the project, as well as the amount of work to be done within certain periods, in order that it may be concluded within the period fixed.

5. The period when the concessionaire is to pay to the ayuntamiento the sum fixed for the cost of studies as well as when he is to pay the amount for which the concession was adjudicated to him.

6. The cases in which the concession will be forfeited and what it may be proper to do in each of these cases in accordance with the provisions hereupon contained in the laws in force on public works.

7. All other conditions which in each special case it is necessary to stipulate, in the opinion of the ayuntamiento, among which must never

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fail to be included the period for the beginning and conclusion of the constructions, in accordance with the provisions of these regulations, nor shall the penalty to be imposed in case of nonfulfillment of this condition which is fixed in the same be omitted.

ART. 99. After the concession has been awarded by the ayuntamiento, the concessionaire shall pay the expropriations of the estates which it may be necessary to occupy, strictly complying with all the provisions with regard hereto contained in the law and these regulations.

Thereupon he shall execute the works of demolition and mark off the lots and establish all the urban public services in accordance with the project, and upon the conclusion of all this work he shall be given possession of the land and lots which remain his property, with the formalities prescribed in the laws in force.

At the time stated in the conditions of the concession, the concessionaire or the persons to whom he may have transferred the lots shall begin the construction of the new buildings, with the understanding that every lot not built upon within the unextendible period fixed for the purpose in the said conditions shall revert to the ayuntamiento, with the loss by the concessionaire, and, in a proper case, by the person who acquired the same, of the sum he may have paid therefor.

The ayuntamiento shall sell this lot or lots at public auction under similar conditions, in order that the buildings on the street may be speedily concluded.

ART. 100. The ayuntamiento may grant an extension to the concessionaire for the conclusion of the works, provided that it is duly proven that in the prosecution of the expropriation proceedings cases have arisen for which the concessionaire is not to blame, and which hindered the normal progress of the corresponding steps.

In no case can extensions be granted with regard to the construction of the new buildings which are to be erected on the lots marked off, nor any dispensation or exemption from any of the conditions relating to this part of the work fixed in these regulations.

ART. 101. Any private individual or duly organized company may address the ayuntamiento proposing the execution of works for the improvement, sanitation, and widening of streets of a town, and request the concession thereof.

The petitioner shall apply to the ayuntamiento for the concession, and must attach to the request the proper project. This project must conform to the provisions of articles 79 and 80 of these regulations, and the petitioner, upon presenting it, shall attach the deposit receipt showing that he has deposited in the treasury of the ayuntamiento a sum equivalent to 1 per cent. of the sum which corresponds to the expropriations and the value of the works projected according to the estimate.

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ART. 102. The project of the petitioner shall afterwards be submitted to all the proceedings which articles 82 to 84 prescribe for the declaration of public utility, and for the approval of the said project.

Afterwards the cost of the studies shall be taxed, which shall be done by two experts appointed, one by the person interested and the other by the ayuntamiento, or by a third person designated in advance and by common consent by the said experts in case of disagreement.

ART. 103. The concession shall be granted by the ayuntamiento at a public auction, for which the provisions contained in articles 95 to 98 shall be observed, the petitioner being obliged to make the calculation which, according to article 96, is to serve as a basis for the public sale.

The right of *tanteo* is reserved to the petitioner in such case—that is to say, the right to receive the concession, if he should so desire, for the sum which may have been offered by the highest bidder.

If the person interested should desire to make use of this right he must attend the public sale, either in person or through a duly empowered representative, which sale shall be extended one-half hour in order that the petitioner may make the proper declaration, which shall be recorded upon the minutes of the sale in a proper case. If upon the expiration of the half hour no declaration whatsoever should be made, it shall be understood that the petitioner renounces his right.

If the petitioner of the concession should not be given the concession at the sale, the successful bidder must pay to the former, within the period of fifteen days from the date the concession was awarded to him, the sum at which the project was appraised in accordance with the provisions of article 102.

The ayuntamiento shall return to the petitioner in such case the deposit which he may have made upon presenting the project according to article 101 of these regulations, which return shall be made on the day following the holding of the sale.

The provisions of articles 99 and 100 shall be observed in this case for the payment of expropriations, the execution of the works, delivery to the concessionaire of the lots marked off, and other details established in the aforementioned articles.

ART. 104. In the sales of concessions the ayuntamiento shall observe the provisions of the royal decree of February 27, 1852, with regard to contracting for public services and the instructions issued for its application, in so far as these provisions are not modified by these regulations.

ART. 105. The ayuntamiento shall keep a separate account exclusively of the expenses relating to the works referred to in the foregoing articles, and may contract loans for their execution according to the provisions of article 51 of the law.

When the ayuntamiento should consider the negotiation of a loan

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of this character necessary it shall order its finance commission to draw up the proper project.

Said commission shall present with its project the documents which it may consider proper in order to show the condition of the municipal funds and a memorial with the reasons detailing the calculations of the operation with regard to the payment of interest and series of years of the amortization, as well as the project of the document of conditions, which is to serve for the negotiation of the loan at public sale. The ayuntamiento shall afterwards decide what it may deem proper, conforming to the provisions of the municipal law, afterwards transmitting the proceedings to the Government for its approval.

The proper minister shall render his decision after hearing the council of state.

ART. 106. The provisions contained in article 73 of these regulations are applicable to the parcels of land which are left over after the execution of the works of improvement of the interior of a town, in accordance with the project approved, and after having sold, in a proper case, the lots referred to in article 92, as well as those which may have reverted to the municipal corporation on account of noncompliance by the concessionaire or owner with the building conditions according to the provisions of the third paragraph of article 99.

The parcels which remain the property of the ayuntamiento, on account of not having been acquired by the corresponding owners, may be sold in accordance with the provisions of the law of June 17, 1864. If the work should have been executed by concession, the concessionaire as the owner of the parcels may alienate them without restriction, but always under the conditions imposed upon him in order that they may not remain a long period without the building which may be proper in accordance with the project. Nonfulfillment of these conditions, which can not be extended, shall always carry with it the reversion of the lot or parcel to the ayuntamiento with the loss to the owner of the value thereof.

ART. 107. The expropriations necessary to carry out the plan of widening the streets of a town shall be made in accordance with the provisions of the law of December 22, 1876, and Chapter V of the regulations of February 19, 1877, for the application of the said law.

ART. 108. The provisions contained in articles 39, 58, and 76, with regard to notifications to the persons interested in the expropriations and with regard to the action to be taken when any of the persons interested should make use of the right granted him by the law to appeal from administrative decisions, shall be applicable to the proceedings which may be instituted for the purpose of executing the works referred to in this chapter.

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Chapter VI.—Temporary occupations.

Art. 109. The administration, or the person representing the same, has the right to impose upon private property the easement of temporary occupation whenever it should be necessary for the execution of the works previously declared of public utility and for those which are excepted from this formality by article 11 of the law on expropriation in the cases and with the requisites which are required by Title III of the said law and the corresponding articles of these regulations.

This easement is compulsory with regard to rural estates; but in no case can it be imposed upon urban estates without the express permission of the respective owner.

Art. 110. When the temporary occupation should be indispensable for the purpose of making examinations or operations in order to collect data for the formation of a plan or description of a work, which is the first case of article 55 of the law, the governor of the province shall furnish the technical person in charge of the said studies or operations credentials for the mayors of the towns within whose jurisdiction he is to work, in order that he may be given all the assistance possible, and especially to obtain from the owners permission to enter their premises.

Art. 111. The amount of losses or damages which may be caused to the owner by the temporary occupation, in the case of the preceding article, shall be fixed by two experts, one appointed by the technical person in charge of the work and the other by the owner of the estate. In case of disagreement between the experts, the amount of damages shall be fixed by the proper mayor, an appeal being allowed to the governor of the province. The sum at which the indemnity is fixed shall be paid at once to the owner by the person in charge of the works.

Art. 112. If the owner should without just cause refuse to grant permission to enter his premises, or if, after the amount of losses and damages has been fixed in the manner mentioned in the foregoing article, he should insist on his refusal, the mayor shall inform the governor of the province, who shall take the proper steps to enforce compliance with the provisions of the law and these regulations.

Nevertheless, the said governor may withdraw, at the instance of a party, the authority granted, enforcing the liability which may have been incurred by reason of the commission of any abuse.

Art. 113. Private estates may also be occupied temporarily in the second case mentioned in article 55 of the law; that is, for the establishment of temporary roads, workshops, storehouses, deposits of materials, and any other easements required in the construction, repair, and preservation of the works.

Art. 114. The necessity of the temporary occupation in the case mentioned in the foregoing article shall be declared in the terms prescribed in article 58 of the law.

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ART. 115. In these cases the owner of the land shall be indemnified for the time of the occupation, as well as for losses and damages and deterioration of any character which may be caused thereby.

Whenever it is convenient for the owners, and they should so demand, the condition of their estates shall be recorded before they are occupied with regard to any circumstance which may cause a doubt in the appraisal of the damages caused thereto.

ART. 116. When it is possible to fix in advance the extent and duration of the temporary occupation before it actually takes place, an agreement shall be made with the owner upon the amount of the indemnity. For this purpose the representative of the administration or the concessionaire shall offer to the owner the sum which may be considered proper, granting him a period of ten days in which to answer whether he accepts or refuses the said offer.

In case of his acceptance, the payment of the corresponding amount shall be made, and the estate may be occupied at once without the owner being permitted to make any objection whatsoever.

If the person interested should not answer within the period fixed in the first paragraph of this article, it shall be understood that he accepts the offer made, and the estate shall be occupied after the payment of the indemnity, as stated in the second paragraph.

ART. 117. In all cases in which it should not be possible to fix in advance the extent and duration of the occupation, an attempt shall be made by the representative of the administration, or by the concessionaire to reach an agreement with the owner, to fix a sum sufficient to answer for the amount of the idemnity. If an agreement should be reached on this point, the amount fixed shall be deposited in the treasury of the economic administration of the province to answer for the payment of the indemnity at the proper time.

In case of disagreement the parties interested shall appoint experts to determine the amount of the sum to be deposited, the procedure in these cases being similar to that prescribed for the expropriation by article 29 et seq. of the law and the corresponding ones of these regulations, the governor of the province deciding in the last case, whose resolution shall be final.

In any case, before the temporary occupation, the experts shall make a record of the condition of the estate, as prescribed in the second paragraph of article 59 of the law, and 115 of these regulations.

Similar proceedings shall be had in order to fix the sum to be deposited when the owner should have refused the offer which may have been made him in the case of article 116.

ART. 118. As soon as the works are entirely concluded, or that portion thereof which affects the lands temporarily occupied, the indemnity shall be fixed which is to be definitely paid for the occupation, deteriorations, losses, and damages caused thereby.

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An attempt shall first be made to reach an agreement with the owner to determine the amount of the indemnity, the proceedings in this case being similar to those prescribed by the law and these regulations for a permanent occupation.

ART. 119. If the owner should refuse the proposal of the representative of the administration or of the concessionaire, the taxation shall be made by experts, according to proceedings similar to those prescribed for the expropriation in the third section of Title II and corresponding chapter of these regulations, until the conclusion of the proceedings either administratively or, in a proper case, by litigation.

In these appraisals the provisions of article 60 of the law and the privilege granted by the same to the administration or to the person acting in its stead to demand the expropriation of the entire estate in the case mentioned therein must be taken into consideration.

ART. 120. For the payments and deposits which may have to be made, for the purpose of satisfying indemnities for temporary occupations, the administration shall conform to the provisions of Chapter IV of these regulations, with regard to permanent occupations.

When said payments or deposits are to be made by concessionaires or contractors of the works, the governor shall take the proper steps in order that they be made strictly in accordance with the provisions of the law and these regulations.

ART. 121. The private properties are also subject to the easement mentioned in the third case of article 55 of the law. Therefore the representatives of the administration and the concessionaires or contractors of the works may extract from said estates all materials which are to be used in said works, whether on the surface of the estates or whether their extraction must be the object of a regular working.

ART. 122. In all the cases of the foregoing article the proprietor shall be paid what may be proper for the temporary occupation in accordance with the provisions hereupon contained in articles 113 to 120 of these regulations.

There shall be paid in addition the value of the material used or extracted in accordance with the provisions contained in the following articles.

ART. 123. When it should be necessary to take from a private estate pebbles, gravel, sand, and other similar material for the execution of a work, the necessity of the extraction shall be passed upon by the governor, after holding in the most summary manner possible proceedings similar to those prescribed in article 58 of the law and 114 of these regulations.

In the cases of this article there shall be paid as indemnity only that corresponding to the losses and damages which are caused to the land by the extraction of the materials; but nothing shall be allowed for the value of the substances themselves, unless the owner clearly and

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definitely proves that prior to the approval of the project of the work they were being worked in a regular manner for the exercise of any industry and for which industry the proper tax was being paid.

It shall not be sufficient, therefore, in order to declare that the payment for the material is proper, that at some period some of the material could have been utilized with the permission of the owner or for any compensation.

ART. 124. When payment for the value of material is proper in accordance with the provisions of the foregoing article the price of the unit shall be fixed according to proceedings similar to those which are to be had in fixing the indemnity corresponding to the temporary occupation, an account being kept according to the means which may be agreed upon by the parties of the number of units which may be removed in order to pay for the same at the times and in the manner which may be proper.

ART. 125. When it should become necessary to take loose stone or rocks from an estate the necessity therefor shall be declared, as in the cases mentioned in article 123.

The indemnity, in the case of this article, shall always include the damage which may be done to the estate by the cartage of the material or in any other manner, the provisions of article 124 being observed with regard to anything else which relates to the indemnification for and value of the material in a proper case.

ART. 126. Should it become necessary to open a quarry upon some estate in order to use the stone produced in the works, after the necessity of the extraction has been declared by the governor as prescribed in article 123, the space which may be necessary shall be occupied and the owner shall be paid only the amount which may be proper for the occupation and the consequent losses and damages. In order that payment may be made for the materials extracted from an estate the owner must prove all that is prescribed in connection herewith by article 61 of the law.

ART. 127. If at the period of the service of the notice made to the owner of the necessity of stone from his lands for the execution of a work quarries already opened should be found thereon, and which were being worked prior to the said period, and the owner should prove that he needs the products for his particular use, the value of the material used shall be allowed, which value shall be appraised and paid for according to means similar to those mentioned in article 124.

The value of the stone shall also be allowed if the working of the quarries constitutes an industry for its owner upon which he is paying the proper tax, provided that these circumstances take place before the notification of the necessity of the material. In such case the owner of the quarry shall furnish the stone which may be necessary

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for the work, and he shall be paid per unit the amount agreed upon between the parties, which shall not exceed the market price thereof.

ART. 128. If the owner of the quarry should not be able to furnish the supplies for the works as they become necessary, the quarries shall be worked on their account, the owner being allowed an indemnity, which, in the absence of an agreement between the parties, shall be fixed by experts appointed by the same. In case of disagreement the governor shall decide after hearing the persons interested and the professional officials whom he may consider proper. The order of the governor shall be final, reserving the appeal to the proper minister, whose resolution shall be definite.

ART. 129. The appraisal referred to in the foregoing article shall be made, taking into consideration—

1. The market price of the stone of the quarry at the time of making the project.
2. The profits on said price to the owner.
3. The condition of the quarry upon the conclusion of the service with regard to its probable future product as well as with regard to the conditions of the working thereof.

ART. 130. For the extraction of material required in the repair and preservation of works which have been declared of public utility the quarries producing the same may be expropriated in whole or in part upon compliance with the steps and formalities prescribed in the law and in these regulations for a permanent occupation.

ADDITIONAL ARTICLE.

The provisions contained in these regulations are applicable only to civil works and constructions. Special instructions issued by the respective ministers shall determine the manner of applying the provisions of the law of eminent domain to military services and works as well as in case of war and those pertaining to the naval service.

Madrid, June 13, 1879. Approved by His Majesty. C. Toreno.

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TRANSLATION

OF THE

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IN FORCE

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ISLAND OF CUBA.

WAR DEPARTMENT,
DIVISION OF CUSTOMS AND INSULAR AFFAIRS.
August, 1899.

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PROVISIONAL MUNICIPAL LAW FOR THE ISLAND OF CUBA.[1]

TITLE I.

MUNICIPAL DISTRICTS AND THEIR INHABITANTS.

CHAPTER I.—*Municipal districts and their alterations.*

ARTICLE 1. A municipality is the legal association of all the persons who reside in a municipal district.

It is legally represented by a municipal council.

ART. 2. A municipal district is the territory under the administrative jurisdiction of a municipal council.

The following are the requisites of a municipal district:

1. That the number of resident inhabitants be not less than 2,000.
2. That it have, or that there may be apportioned to it, a territory in proportion to its population.
3. That it can meet the obligatory municipal expenses with the revenues authorized by law.[2]

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[1] *General government of the island of Cuba.*—His Excellency the colonial secretary, in a telegram of the 25th instant, received to-day, says the following: "His Majesty the King has deemed proper to issue, under date of the 21st instant, the following royal decree: 'In view of the reasons stated to me by the colonial secretary, in concurrence with the council of secretaries, and by virtue of the authority granted my Government by article 89 of the constitution of the Monarchy, I decree the following: Article 1. There shall be promulgated and enforced in the island of Cuba, provisionally, the organic municipal, and provisional laws of the Peninsula, modified as prescribed by article 89 of the constitution of the Monarchy. Article 2. My Government shall inform the Cortes of this decree, in compliance with the said article. Given at the Palace on June 21, 1878. Alfonso.' Jose Eduayen, colonial secretary." And this Government having ordered the immediate enforcement of the foregoing royal decree, it is published in the *Gaceta*, together with the laws referred to in the same, for the consequent effects. Havana, June 28, 1878. Arsenio Martinez de Campos.

[2] By a royal order from the department of the interior of September 26, 1885, the resolution adopted by the deputation of Zamora, in the proceedings instituted in order to transfer the seat of the municipality of Olmo de Guarena to Vallesa, for the reasons which follow, was declared final:

Whereas, according to certificates of July 27 and 28 last, duly executed, the municipal council resolved upon the transfer, and that the municipal district in question has 166 residents, of whom 93 signed, on the 24th of the said month, a petition addressed to the municipal council requesting that the measure be carried out, the residence of the petitioners being duly certified to; whereas, according to several royal orders, among others those of October 8, 1879, and July 13, 1880, from which emanated the legislation observed on the subject, issued in accordance with a report from the council of state, the resolutions of provincial deputations relating to the change of the seat of municipalities are final when they are issued in accordance with the report of a majority of the municipal council and with that of the residents of the district, which requisites are present in this case.

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The present municipal districts which have a municipal council may continue in existence even though they do not fill the requisite prescribed in number 1 of this article.

ART. 3. Municipal districts may be changed:

1. By their annexation in whole to one or more adjoining districts.

2. By the annexation of part of a district, either to constitute, in itself or with one or more parts, an independent municipality, or either to annex it to one or to several of the adjoining districts.[1]

ART. 4. The abolition of a municipality and its annexation to one or more of the adjoining districts is proper—

1. When, on account of the lack of means or other good reasons, it is resolved and requested by the municipal councils and a majority of the inhabitants of the municipalities interested.

2. When, on account of the widening and development of building, the limits of the towns become confused and it is not easy to determine their true limits.[2]

ART. 5. The segregation of a part of a district in order to annex it to other existing ones is proper when requested by a majority of the residents of the portion to be segregated and when it can be effected without prejudicing the legitimate interests of the rest of the municipality, nor cause it to lose the conditions mentioned in article 2.

The segregation of part of a district in order to constitute one or more independent municipalities, in itself or in union with one or more portions of adjoining districts, may take place by the agreement and on the request of a majority of the persons interested and without prejudicing legitimate interests of other towns, provided the new districts which are to be formed include the conditions mentioned in article 2.[3]

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[1] By a royal-decree ruling of July 5, 1883, it was resolved that it behooves the governor of the province, and in a proper case the provincial deputation, as a court having jurisdiction over litigative matters to determine to what municipal district a piece of land belongs, the jurisdiction over which is disputed by two municipalities, without prejudice to the question of ownership.

By a royal order of May 21, 1887, issued by the department of the interior, it was declared that, in order to transfer the seat from one town to another, the same formalities must be observed, in so far as possible, as those for the change of municipal districts.

[2] By a royal decree of July 12, 1884, of the department of the interior, a resolution of the provincial deputation of Barcelona was declared null, which decided the annexation in whole of the district of Santa María de Sans to the capital of the province, because the wishes of the residents of both towns were not stated.

[3] Circular royal order of February 26, 1875, stating the conditions necessary to request the annexation and segregation of a municipal district, and stating the documents which must accompany the petitions relating thereto.

His Majesty the King (whom God preserve), has informed himself of the numerous statements addressed to the department of the interior by residents of different towns, requesting that the segregation of some zones of the municipal district of which they form part be ordered, either to constitute an independent municipality or to be annexed to other different ones from those they actually belong to; and the repetition of such appeals, as well as the lack of documents which is observed in all

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ART. 6. In any of the cases of annexation or segregation the persons interested shall indicate the new demarcations of lands and shall effect the division of property, lands owned in common, public uses and credits, without prejudice to the rights of ownership and public and private servitudes existing.

ART. 7. The Governor-General of the island shall decide the proceedings relating to the creation, segregation, or abolition of municipalities and municipal districts, after reports from the governor and from the deputation of the province.

His decision shall be final when it is in accordance with the report of the provincial deputation.

In case of disagreement the proceedings shall be forwarded to the colonial department, which shall decide after consulting with the council of state.

ART. 8. Every municipal district shall form part of a judicial district and of a province, and can not belong, for any reason whatsoever, to different jurisdictions of the same order.

ART. 9. In order to transfer a municipal district from one judicial district to another, proceedings shall be instituted hearing the municipal councils of the town and of the seats of the judicial districts, as well as the deputation and the governor.

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of them, require the adoption of rules in accordance with which said segregation may take place, and the reminder that until the present municipal law is repealed or amended, it behooves the provincial deputations in the first place to decide this class of requests. It is sufficient to look at the law to judge what documents are necessary in these proceedings. According to article 5 of said law, in order that the segregation of part of a municipal district may be proceeded with, the following requisites are necessary:

1. That a majority of the residents of the zone to be segregated requests it. 2. That this segregation does not prejudice the legitimate interests of the municipality. 3. That it does not cause it to lose the conditions mentioned in article 2 of the same law.

It is therefore indispensable and you must see most especially that all proceedings for the segregation are accompanied with the following documents:

(1) Petition of all the residents who request the segregation; (2) certificate from the secretary of the municipal council, visèd by the mayor and drawn up after the signatures, in which the residence of the subscribers shall be stated; (3) certificate of the secretary of the municipal council, also visèd by the mayor, of the total number of residents of the municipal district in question; (4) a similar certificate with regard to the part of the district which it is desired to segregate; (5) a certificate from both municipal councils, if the segregation is made in order to annex the part segregated to another municipality, relating to the conjunction of pasture grounds which the residents of the zone it is desired to segregate may have with each one thereof; (6) a similar certificate issued only by the municipal council to which the zone to be segregated belongs, in case the segregation is to take place in order to establish a new municipality; (7) reports from the municipalities interested and from all the towns situated on the boundaries of the same; (8) a plan of the ground.

By a royal order of April 23, 1880, the proceedings instituted with regard to the segregation of territory of the municipalities of Sabanilla del Encomendador and Alfonso XII, and their annexation to that of Unión de Reyes in the island of Cuba, was decided in favor of the provincial deputation of Matanzas after a report from the council of state.

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The Governor-General shall forward the proceedings, with his report, to the colonial department, which shall decide thereon after hearing the council of state.

ART. 10. Groups of population, although they have their own municipal council, situated at a maximum distance of five kilometers from the district line of the capital of the island or from any other town containing the same or a larger number of inhabitants, may be annexed to said districts by virtue of a resolution of a royal decree issued after consultation with the council of state.

CHAPTER II.—*Inhabitants of municipal districts.*

ART. 11. The inhabitants of a municipal district are divided into residents and transients.

The residents are subdivided into residents and denizens.

ART. 12. Residents are all emancipated Spaniards who permanently reside in a municipal district and are recorded as such in the register of the town.

Denizens are all Spaniards who, without being emancipated, reside permanently within the district, forming part of the family or household of a resident.

Transients are all persons who are not included in the foregoing paragraphs and are temporarily in the district.

ART. 13. Every Spaniard must be registered as a resident or denizen of some municipality.

A person who resides alternately in different ones shall claim the residence of one of them.

Nobody can be a resident of more than one town; if any person is recorded in the registry of two or more towns, the last declared residence shall be considered the valid one, the previous ones being thenceforth considered annulled.

ART. 14. The character of resident is declared officially, or at the instance of a party, by the respective municipal council.

ART. 15. The municipal council shall officially declare as residents all emancipated Spaniards who at the time of the formation or correction of the registry have resided continuously for two years in the municipal district.

A similar declaration shall be made with regard to the persons who are filling public offices at that time requiring a fixed residence in the district, even though they have not completed the two years.

ART. 16. The municipal council, any time of the year, shall declare every person who requests it a resident, said person not being thereby exempted from paying the municipal taxes which correspond to him up to that date in the town of his previous residence.

The petitioner must prove that he has resided continuously in the district for a period of six months at least.

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CHAPTER III.—*Registration.*

ART. 17. It is the duty of municipal councils to make a register of all the inhabitants of their district, stating whether they are residents, denizens, or transients, name, age, status (whether married or single), profession, residence, and other details required by statistics and determined by the government.[1]

ART. 18. Every five years a new register shall be made, which shall be corrected every intermediate year by the official entries or at the instance of a party and by the eliminations on account of legal incapacity, death, or transfers of residence which have taken place during the year.

Residents who change their domicile, the parents and guardians of those who become incapacitated, and the heirs or legatees of deceased persons, are obliged to make the proper report to the municipal council, in order that the elimination may take place.

ART. 19. After the five-yearly registration has been made, or its annual rectification, the municipal council shall make up two lists in abstract, one stating the changes which have taken place during the year and another including all the inhabitants there may be in the district at the conclusion of the work.

These lists shall be published at once.

ART. 20. The registration and the rectifications shall take place in the month of December, and shall be, as well as the lists, at the disposal of all those who wish to examine them in the office of the secretary of the municipal council on working days and during office hours.

In the fifteen following days the municipal council shall receive the complaints which any resident of the district may make against the registry or its rectifications, and shall decide thereon during the rest of the month, entering in the book of minutes the decision adopted with regard to each person interested, who shall immediately be informed thereof in writing.

ART. 21. From these decisions of the municipal councils an appeal lies to the provincial deputation.

The appeal shall be instituted before the mayor within the three days following the written notification of the decision.

The mayor shall forward, without any delay whatsoever, the proceedings to the provincial deputation.

The deputation within the period of one month shall finally decide, in view of the reasons alleged by the persons interested and the municipal council, and shall communicate to the latter its decision, with the reasons therefor, after which, the proper corrections having been made during the following week, the registration shall be declared terminated and the corrected lists shall be published.

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[1] With a circular from the General Government of October 12, 1882, there was forwarded to the municipal councils the form for the register they are to make in accordance with the provisions of this article.

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ART. 22. The register is a solemn, public, and authentic document, which shall serve for all administrative purposes.

ART. 23. The municipal councils shall forward to the deputation, in the last month of each fiscal year, a statement of the number of residents, denizens, and transients, classified as may be determined by the Governor-General of the island, for the census of the population.

CHAPTER IV.—*Rights and obligations of inhabitants of municipal districts.*

ART. 24. All persons appealing to the municipal authority have a right to demand of the same a statement, in which there shall be stated the claim or complaint and the date and hour on which it was made.

ART. 25. All the inhabitants of a municipal district have a right of action against the decisions of municipal councils, as well as to denounce and prosecute criminally mayors, aldermen, and members of the assembly of associates in the cases and at the time and in the manner prescribed by the provisions of this law and those of the royal decree and regulations of September 12, 1868.[1]

ART. 26. All the residents of a municipal district are subject to the taxes which may be imposed for the municipal and provincial services, in the manner and proportion determined by this law.

If the town has property owned by the community, the following rules shall be observed for its annual arrangement and distribution:

1. When the property in common can not be equally utilized by all the residents of a town, the enjoyment and benefit shall be awarded at public auction among the said residents exclusively, after the necessary appraisements and its division into lots in a proper case.

2. If the property is susceptible of general utilization, the municipal council shall distribute the products among all the residents, distributing them for the purpose into divisions or lots, which shall be awarded to each person in accordance with any of the three following bases:

By families or residents.

By persons or inhabitants.

By the quota of assessment, should there be any.

3. The distribution, according to residents, shall be made with strict equality to each one of them, without regard to the number of persons their family may consist of or of the number who live with them and are dependent upon them.

The distribution by persons shall take place by allotting to each resident the portion corresponding to him in proportion to the number of resident inhabitants of which his household or family consists.

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[1] By a royal decree of June 21, 1878, issued by the secretary of the interior, refusing the admission of a claim it was ordered that the litigative procedure was proper when administrative resolutions had injured the right of a private party, which can not take place when a contract is in question to which he was not a party; that although by article 25 of the municipal law residents may denounce certain acts of the municipal council, they have not the right nor the authority to impugn the resolutions of the government which condemns the denunciation.

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The distribution according to the quota of assessment shall take place among the residents subject to the payment thereof, and awarding to each person the part corresponding in proportion to the quota allotted.

In such case there shall be awarded to the poor residents exempted from the payment a portion not exceeding that which corresponds to the taxpayer paying the lowest quota.

4. In extraordinary cases, and when the requirements of the town necessitate it, the municipal council may order the auction of the so-called lands owned in common among the residents, or to fix the price which each one is to pay for the lot which may have been awarded to him.

The administration, use, and preservation of municipal timber lands shall be subject to the forestry laws in force.

ART. 27. In so far as the municipal financial administration is concerned, as well as the rights and obligations arising therefrom with regard to residents, the following shall be considered as owners of the estates they cultivate, occupy, or administer:

1. The administrators, attorneys, or agents of nonresident owners, without prejudice to the following cases, be they either at the head of an agricultural, industrial, or commercial establishment opened in the district for the account and in the name of the latter, or if they limit themselves to the collection of rents.

2. Farmers, lessees, or coproprietors of rural estates, whether the owners or administrators reside in the district or not.

3. Tenants of town property, when the same is leased to one person only, and its owner, administrator, or agent does not reside in the district.

ART. 28. Foreigners shall enjoy the rights granted them by the treaties or special laws relating to them.

TITLE II.

GOVERNMENT AND ORGANIZATION OF MUNICIPALITIES.

CHAPTER I.—*Municipal councils and municipal boards.*

ART. 29. In every district there shall be a municipal council and a municipal board.

ART. 30. The interior government of every municipal district shall be intrusted to a municipal council composed of—

Mayors.

Deputy mayors.

Aldermen.

The municipal council shall be elected by the residents of the district who enjoy the electoral franchise according to article 40 and in the manner determined by the laws.

ART. 31. It behooves the municipal councils to draw up the budgets, which shall be approved by the municipal boards. It also behooves

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the latter to establish and create taxes at the time and in the manner prescribed by this law.

ART. 32. The municipal board shall be composed of—

1. Of all the members the municipal council must have.

2. Of a number of associate members equal to that of councilors.

This assembly shall be designated in the manner mentioned in Chapter III of this Title II.

ART. 33. It behooves the municipal boards to revise and audit the accounts of the municipal councils.

CHAPTER II.—*Organization of municipal councils.*

ART. 34. The census of the population shall determine the number of councilors corresponding to each municipality and their distribution as deputy mayors and aldermen; the number of deputies shall determine the number of municipal subdistricts each district is to be divided into, and the number of residents in each one of said subdistricts shall determine the number of wards, electoral districts, and sections of each electoral district, all in accordance with the following articles:

ART. 35. The number of councilors, subdistricts, and electoral districts shall be adjusted to the following schedule:

	Mayors.	Deputy mayors.	Aldermen.	Total number of councilors.	Subdistricts.	Electoral districts.
Up to 500 inhabitants	1	.....	5	5	1	1
501 to 800	1	.....	6	6	1	1
801 to 1,000	1	1	6	7	2	1
1,001 to 2,000	1	2	6	8	2	1
2,001 to 3,000	1	2	7	9	2	1
3,001 to 4,000	1	2	8	10	2	3
4,001 to 5,000	1	2	9	11	2	3
5,001 to 6,000	1	2	10	12	2	3
6,001 to 7,000	1	3	10	13	3	4
7,001 to 8,000	1	3	11	14	3	4
8,001 to 9,000	1	3	12	15	3	4
9,001 to 10,000	1	3	13	16	3	4
10,001 to 12,000	1	4	13	17	4	5
12,001 to 14,000	1	4	14	18	4	5
14,001 to 16,000	1	4	15	19	4	5
16,001 to 18,000	1	4	16	20	4	5
18,001 to 20,000	1	5	16	21	5	6

For more than 20,000 inhabitants no change shall be made except to increase the number of aldermen by one for every 2,000 inhabitants until the municipal council has the maximum number of thirty councilors.

The subdistricts into which each district is divided shall have a more or less equal number of inhabitants.

ART. 36. Each subdistrict shall be divided into wards when, on account of the number of its inhabitants or on account of local circumstances, it is thus required for the good of the municipal service.

The wards of each subdistrict shall have approximately the same population, and each ward shall be included within one subdistrict.

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All suburbs removed from the limits of the town, as well as any other part of the municipal district removed from the said limits, shall constitute a ward, no matter what their population may be.

In each ward there shall be a mayor (alcalde) of the same, appointed by the mayor of the town from among the voters permanently residing in the ward.[1]

The mayor may freely remove mayors of wards.

In the towns referred to in chapter 2 of title 3 of this law, the duties of mayor of a ward shall be discharged by the presidents of the boards, who must be elected as prescribed in the same chapter; and they can not be removed, except for the reasons mentioned in this law, for deputy mayors.

ART. 37. The municipal districts shall be divided into the number of electoral districts which the municipal council may consider advisable, provided said number is not less than the number of deputy mayors; and provided further, that one electoral district does not constitute a part of different subdistricts. In towns not having more than 800 inhabitants one electoral board only shall be established.

The municipal council may divide the electoral districts into the number of sections necessary to facilitate the free exercise of suffrage, provided the number does not exceed that of the ward mayors.[2]

Groups of rural population which, according to this law, form wards, shall constitute a section if they exceed 800 residents.

ART. 38. The first division of the district into subdistricts, wards, electoral districts, and sections shall be made in accordance with the following rules:

1. The municipal council shall order the division, and shall have it published in the *Gaceta de la Habana* and by means of the official newspapers of the province and of the town, or by means of edicts in the absence of the latter.

2. The residents and denizens of the district may, within the following month, to be counted from the date of the publication of the resolution, make such complaints against the same as they may consider proper.

3. Should there be no objections, the resolution shall be considered as final at the end of the period mentioned above; should there be any, the municipal council shall investigate them and forward the same, with its report, together with a certified copy of the resolution of division, to the governor of the province within the fifteen days following the expiration of the period.

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[1] Resolution of the general government of February 4, 1882, ordering, in concurrence with the council of administration, that an appointment of ward mayor must be given to one of the electors of the same ward.

[2] By a royal order from the interior department of April 25, 1887, it was resolved that there exists no legal obstacle if another new distribution of electoral districts should be in force for the biennial renewal of the departing councilors different from the one in force at the time of their election.

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4. The governor, after hearing the deputation, which shall examine the data and the objections and shall decide what may be proper with regard to the points referred to in the latter, shall communicate his report within one month from the date of the reception of the proceedings.

ART. 39. After the division of a municipal district has been made, in accordance with the prescriptions of this law, it can not be changed until two years at least have elapsed, and only in case time shows that it does not correspond to the conditions and circumstances above mentioned, and never in the three months preceding any ordinary election.

The proceedings for change shall be instituted at the instance of the municipal council and shall pursue the same course as those mentioned in the foregoing article.

ART. 40. Those persons shall be electors who are such according to the electoral law.

ART. 41. The electors who besides having resided at least four years continuously in the municipal district, possess the qualifications mentioned in the electoral law, shall be elegible.[1]

ART. 42. It shall be so arranged that each electoral district shall elect four councilors, or as near that number as possible. Each elector shall vote for two councilors only when three are to be elected in the electoral district, for three when four are to be elected, for four when six are to be elected, and for five when seven are to be elected.

When this law has been promulgated, the formation of the electoral lists shall be proceeded with in accordance with the prescriptions contained in the foregoing paragraphs, subject with regard to their formation, periods, and other requisites and proceedings to the provisions of the electoral law.

ART. 43. The following can in no case be councilors:

1. Provincial deputies or deputies to the Cortes, and senators.

2. Justices of the peace, notaries, and other persons who fill public offices which have been declared incompatible with the office of councilor by special laws.

3. Those who discharge public remunerated functions, even though they have renounced the salary. Professors at universities or institutes may be councilors in the towns where they discharge their duties.

4. Those who directly or indirectly are interested in services, contracts, or furnishing of supplies within the municipal district for the account of the municipality, province, or State.

5. Debtors as taxpayers to the municipal, provincial, or general funds, who have been judicially notified.

6. Those who have an administrative or judicial suit pending with the municipal council, or with the establishments under its dependency or administration.

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[1] By royal order issued by the department of the interior of March 31, 1887, it was ordered that persons receiving salaries from municipalities could be elected councilors, being obliged, however, to choose one of the positions, which are incompatible.

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In order to discharge the duties of deputy mayor or syndic, it is necessary to know how to read and write.

The following may excuse themselves from acting as councilors:

1. Persons over sixty years of age and those physically incapacitated.

2. Persons who have been senators, deputies to the Cortes, provincial deputies, and councilors for two years after having ceased in their respective offices.

Councilors shall cease in their offices if they should at any time not possess all the conditions mentioned in this law.[1]

Each electoral district shall appoint the number of councilors which belongs to the same in proportion to the number of electors.

The sections of each electoral district shall vote for the same number of councilors assigned to the latter.

ART. 44. Municipal elections shall be held in the first two weeks of the month of May.

ART. 45. The municipal councils shall be renewed by half every two years, the oldest councilors in service going out at each renewal.

In cases of ordinary or extraordinary renewals, the election of the councilors shall be made by the same electoral districts which elected the departing ones.

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[1] Resolution of the general government of October 11, 1888:

"In the proceedings for review, instituted by Don Amador de Rojas and Don Mariano Bacallao, against an administrative decision revoking the decision of the municipal council of Placetas, which ordered that five councilors of said corporation discontinue in their offices, the council of administration has deemed proper to issue the following report:

"Your Excellency: The council has examined the data relating to the appeal for review taken by Don Amador Rojas and Don Mariano Bacallao against a ruling of the civil government of Santa Clara, which, in revoking a decision of the municipal council of Placetas, ordered, in accordance with the second paragraph before the last of article 43 of the municipal law, that five councilors of said corporation should discontinue in their offices. The said councilors, namely, Don Enrique V. Villar, Don Agustín Rojas, Don Arcadio Conde, Don Rosendo Perez, and Don Mariano Bacallao, were excluded from the electoral lists:—Rojas by a resolution of the municipal council adopted when the last rectification of the electoral lists was made and the others by virtue of the sentence rendered at the same time by the audiencia of the territory. Based hereon, and understanding that the second paragraph before the last of article 43 of the municipal law was applicable to the case, the governor, who took cognizance of the matter by virtue of an appeal brought by a resident against the municipal council which was favorable to the councilors, made a ruling to the effect mentioned. The sentence of the audiencia being irrevocable, and taking into consideration that, according to article 43 of the municipal law, councilors shall discontinue in office if they should cease to fulfill the conditions stated in that law, and considering that, in accordance with its article 41, persons who are not qualified as electors can not be councilors, it is evident that the said four councilors, by being excluded from the electoral lists, lost said qualification and incurred the case of disqualification established by article 43, as they lacked the condition indicated in article 41. With regard to Rojas, he is in similar circumstances; the ruling of exclusion from the lists made against him by the municipal council, and which was made final, deprived him also of the quality of an elector, so that he was included thereby in the provisions of articles 43 and 41, in common with his associates. On the other

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ART. 46. A partial election shall be held when, at least six months before the ordinary elections, vacancies occur which amount to a third of the total number of councilors.

If the vacancies occur after said period, and amount to the number indicated, they shall be temporarily filled, until the first ordinary election, by the persons whom the governor of the province may appoint from among those who had formerly been elected to the municipal council.

ART. 47. The municipal councils shall make a report of the aforesaid vacancies to the governor, who, within ten days exactly, shall order the election held within a period not less than fifteen nor more than twenty days, counted from the time the resolution is communicated to the respective municipal council.

ART. 48. For the purposes of this law, in so far as the series of cessation is concerned, the persons elected shall, in cases of vacancies, be considered as the councilors they substitute.

ART. 49. Mayors shall be appointed by the Governor-General from among the councilors of the respective municipal councils on the recommendation in ternary of the said corporations.

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hand, neither the municipal council of Placetas, nor the councilors interested, with the exception of Bacallao, have complained against the ruling of the governor, and Don Amador Rojas does not appear to be authorized to institute the complaint of which he is the author, or if he does have said authority, it has not been proved. The council, therefore, is of the opinion that the ruling of the governor should be confirmed."

"And His Excellency, on the 4th instant, having approved the same, in accordance with the foregoing ruling it is published in the Official Gazette by his superior order for general information."—Havana, October 11, 1888. Alberto de Quintana.

INCOMPATIBILITIES.

Royal order of September 7, 1871: Orders that the offices of recording clerks of audiencias and clerks of chambers are incompatible with those of councilor and provincial deputy.

Royal order of June 13, 1871: Officers of the army on the waiting list can not be councilors.

Articles 111, 112, and 113 of the organic law of the judicial power: The offices of judges and associate justices are incompatible with those of provincial deputies, mayors, and aldermen.

Royal order of October 18, 1879: The office of municipal *fiscal* is incompatible with the office of councilor.

COMPATIBILITIES.

Royal order of December 11, 1871: The office of solicitor is compatible with that of councilor.

Royal order of April 20, 1872: The husbands of municipal schoolmistresses may be councilors.

By a royal order of June 5, 1882, it was decided, in accordance with the provisions of article 13 of the regulations in force, that the offices of consuls and vice-consuls which are filled by Spanish citizens are compatible with those of provincial deputies and municipal offices. Decision rendered in the case of Don Patricio Sanchez, provincial deputy of Pinar del Rio, appointed consular agent of the Empire of China in said province.

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When the Governor-General considers it advisable for the interests of the locality not to accept any of the persons recommended, he may appoint as mayor a person who possesses the qualifications necessary for the discharge of the office, even though he does not belong to the municipality.

The Governor-General may also remove mayors when he considers that good reasons exist therefor.

Mayors shall receive the remuneration assigned to them, to be paid from the municipal budget.[1]

ART. 50. Deputy mayors shall be appointed in the same manner as mayors; but in no case may the appointment be given to a person who is not a councilor. The Governor-General may order their removal and replacement by other councilors.

ART. 51. The mayors shall present themselves, without loss of time, before the municipal council assembled for the purpose, and shall receive possession from the retiring mayor or from the person who is temporarily filling the office.

ART. 52. When the municipal corporation is to be installed, the mayor shall call them for that purpose and shall install the deputy mayors and councilors. The president and the members of the former municipal council shall be present at this ceremony to receive the new councilors, and shall retire after the latter are installed in office.

ART. 53. After the new municipal council has been established under the presidency of the mayor, it shall proceed with the election of one or two councilors, who, under the name of advocate-syndics (procuradores sindicos), represent the corporation in all the suits which may be instituted in the defense of the municipal interests, and shall revise and audit all the local accounts and budgets.

The ballots shall be secret and the votes shall be written on slips of paper, which shall be deposited in a box, those who obtain the highest

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[1] By a resolution of the General Government of July 3, 1879, it was ordered that the power to fix the salary to be enjoyed by mayors, in accordance with the provisions of this article, is of the competency of said government, on the recommendation of the respective corporations, eliminating from the budgets the clause corresponding to the salary of the mayor, if it had not been approved by the superior authority.

Royal order of March 11, 1880: Making a ruling in accordance with the report submitted by the council of State. That the salary assigned by law to mayors has all the qualities of the remuneration or salary enjoyed by other officials of the administration, and that therefore the payment of the said salary in cases of absence or sickness shall be made as if any other employee of the public administration were in question, with the exception of the case when, in accordance with article 113, a temporary mayor is appointed who does not belong to the municipality, in which case said salary shall be divided between both—that is, between said temporary mayor and the regular incumbent of the office.

The royal order of October 18, 1880, interpreted the foregoing one to the effect that neither the deputy mayors nor other members of the municipal council can in any case collect a salary, even though they act temporarily as mayors.

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absolute majority of the total number of members present being elected. In cases of ties, it shall be decided by lot.[1]

ART. 54. The municipal council shall immediately fix the days and hours on which ordinary sessions are to be held, which shall not be less than one session per week; after deciding which the inaugural session shall be closed.

ART. 55. On the same day the mayor shall appoint, from among the electors, the mayors of wards. The persons appointed shall hold office until the next renewal of the municipal council, if they are not removed before by the mayor.

ART. 56. The mayor shall report to the municipal corporation in the next session the appointments of mayors of wards referred to in the foregoing article.

ART. 57. In the second session the municipal council shall fix the number of permanent committees into which it is to be divided, intrusting to each one of them all the general business of one or more of the branches which the law places in their charge, and determining the number of members which are to compose the same.

After coming to a decision the election of the members thereof shall immediately be proceeded with in secret ballot and with slips of paper, those who obtain the highest number of votes being elected, ties being decided by lot.

ART. 58. During the course of the year the municipal council may appoint, when it considers it advisable, special committees, which shall be elected in the same manner as the permanent ones, but they shall be discontinued when the commission intrusted to them is concluded.

When a deputy mayor or syndic is elected to a committee he shall be its president.

ART. 59. The councilors and the members of the board of associate members may be reelected.

They shall cease to be such if they incur any of the incompatibilities established.

ART. 60. The office of deputy mayor, syndic, councilor, associate member, and mayor of a ward are gratuitous, obligatory and honorary.

The mayors, the deputies, and the mayors of wards shall use as a symbol of their authority the insignia established by the regulations.

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[1] Circular of August 11, 1879:

"His Excellency the Governor-General, in concurrence with a report of the council of administration, has deemed it proper to decide that whenever there is a tie between councilors proposed for the same position in the ternaries which the municipal councils are to draw up for the appointment of mayors and of deputy mayors, the person who is to fill the corresponding position from those in analogy with what is prescribed by article 53 of the municipal law and article 84 of the provincial law, in treating of the election of syndics and councilors, respectively, shall be selected by lot. Which is published in the official gazette for general information by order of His Excellency.—Havana, August 11, 1879. Joaquin Carbonell, secretary of the general government."

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The deputy mayors and aldermen shall not have any special title as such.

CHAPTER III.—*The organization of the municipal board.*

ART. 61. The municipal boards shall be composed of the municipal council and of the associate members in equal number to councilors appointed from among the taxpayers of the subdistrict.

ART. 62. For this purpose all residents may be appointed who are obliged to contribute a quota to the municipal expenses, and where no quota is assessed those who pay a land tax or an industrial, commercial, or professional one.

Persons who are not qualified to be councilors are excepted, however, as well as those who are such at the present time, their associates, and their relatives within the fourth degree, and the employees and clerks of the municipal council.

In towns which do not have over 2,000 inhabitants the exclusion by reason of relationship shall be limited to the second degree.

ART. 63. The appointment shall be made by lot among the taxpayers, divided into sections, in accordance with the following rules:

1. The number of sections shall be determined in one of the first four sessions of the year by each municipal council, taking into consideration the population of the town and the amount and class of wealth of the same, and shall in no case be less than a third part of the councilors.

2. In each section there shall be included the residents or landowners whose professions or trade are more or less related to each other, in accordance with the groupings and classifications made for the payment of direct taxes, in such manner that the members of one taxpaying class do not form part of different sections. Residents who pay taxes for more than one purpose, or are included in two or more industries, shall enter the section they may select.

3. In towns where it is not possible to make any distinction of classes, the payment of taxes of its inhabitants being made for the same reason, or in which there are no industrial branches of sufficient importance to require the formation of a special section, the assessment of the latter shall be made by streets, wards, or parishes.

The same shall be done when any of the sections formed according to the foregoing rule is so large that it in itself constitutes the fourth part of the associate members of the municipal board.

4. To each section there shall be assigned the number of members or associates which correspond to the same in proportion to the amount of taxes paid by all its members.

ART. 64. The municipal council, before the end of the first month of each fiscal year, shall publish the result of the formation of sections, against which any of the persons interested may complain within the period of eight days to the provincial deputation.

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The deputation must decide within the following fifteen days, and its decision shall be final for the two following years.

ART. 65. After the formation of sections has thus taken place, the municipal council in a public session shall announce it two days in advance in the ordinary manner, and at least one hour before on the said day shall proceed, after ringing a bell, with the sortition of the associate members to the sections and shall have the result immediately published.

The board must be definitely established within the second month of the fiscal year.

The persons elected shall hold office for the entire respective fiscal year.

ART. 66. The municipal council shall admit and decide within the period of eight days all excuses or objections, making a new sortition if it is proper, without prejudice to the appeal for review to the provincial deputation.

ART. 67. When a vacancy occurs in the number of associate members a new sortition shall take place, with the formalities mentioned in article 65, in order that their number may always be complete.

TITLE III.

MUNICIPAL ADMINISTRATION.

CHAPTER I.—*Powers of municipal councils.*

ART. 68. Municipal councils are financial administrative corporations, and may only exercise the functions intrusted to them by the laws.

Their title is impersonal.

ART. 69. The government and administration of the private interests of towns is under the jurisdiction of municipal councils, subject to the laws, and particularly in all that refers to the following subjects:

First. Establishment and creation of municipal services referring to the arrangement and ornamentation of public roads, comfort and hygiene of the neighborhood, encouragement of its material and moral interests, and security of persons and property, as follows:

1. Opening and alignment of streets and parks and of all kinds of roads of communication.[1]
2. Paving, lighting, and sewerage.
3. Water supply.
4. Promenades and trees.
5. Bathing establishments, laundries, market houses, and slaughterhouses.

[1] By a circular of the General Government of December 29, 1887, the municipal councils were reminded of their duty to strictly observe the regulations of December 22, 1857, in the proceedings relating to the opening and closing of roads and public easements.

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6. Fairs and markets.

7. Institutions for instruction and sanitary services.

8. Municipal buildings and in general all kinds of public works necessary for the fulfillment of the services subject to the special legislation on public works.

9. Surveillance and police.

Second. Urban and rural police—that is, all that refers to the good order and surveillance of the established municipal services; care of public roads in general, and cleanliness, hygiene, and health of the town.

Third. Municipal administration, which includes the use, care, and preservation of all estates, property, and rights belonging to the municipality, and to the establishments depending therefrom, and the determination, assessment, collection, investment, and account of all taxes and imposts necessary for the execution of the municipal services.

It is the obligation of municipal councils to construct and keep in repair municipal roads. In so far as rural roads are concerned, the municipal councils shall oblige the persons interested in the same to preserve and repair them.

In order to attain these objects the proper measures with regard to municipal roads shall be adopted by the board of associates, and with regard to the rural roads by a board of the persons interested.

The governors shall see to the fulfillment of this most interesting part of the administration, by virtue of the powers granted them by the laws.

ART. 70. It is the duty of municipal councils to procure, alone or with the assistance of the members, in the manner hereafter expressed, an exact compliance, in accordance with the means and necessities of the town, of the purposes and services which, according to the present law, are intrusted to their action and surveillance, and particularly the following:

1. Preservation and repair of public roads.

2. Rural and city police.

3. Police for security.

4. Primary instruction.

5. Administration, custody, and preservation of all estates, property, and rights of the town.

6. Charitable institutions.

Municipal resolutions relating to fairs and markets, surveillance, police, and security, primary instruction, and charitable institutions require the previous approval of the governor.

In matters which do not come under his jurisdiction they are also obliged to assist the action of the general and local authorities in the fulfillment of that part of the laws which refers to the inhabitants of the municipal district, or which is to be complied with within the same, for which purpose they shall proceed in accordance with the prescriptions of the said laws and the regulations issued for their execution.

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ART. 71. For the fulfillment of the obligations of municipal councils, the following are their special powers:

1. Establishment of the municipal ordinances for the city and rural police.

2. The appointment of its employees and agents in all branches in accordance with this law and other special ones.[1]

The agents of municipal surveillance who carry arms shall depend exclusively on the mayor with regard to their appointment and removal.

3. The establishment of personal services.

ART. 72. The municipal ordinances for the rural and town police, which may be issued by the municipal councils for the government of their respective districts, shall not be final without the approval of the governor in concurrence with the provincial deputation.

In case of disagreement, if the municipal council insists on its resolution, the points in question shall be decided by the Governor-General, after consultation with the council of administration.

Neither in said ordinances nor in the regulations and provisions which the municipal councils may adopt for their execution, shall the general laws of the country be infringed.

ART. 73. The penalties which municipal councils may impose for infractions of the ordinances and regulations can only be fines, not to exceed 10 pesos in the capitals of provinces and towns having an equal population, 5 pesos in seats of judicial districts and towns of 4,000 inhabitants, and 3 pesos in other towns, with reparation for the damage done and indemnification for costs, and arrest of one day for each peso in cases of insolvency.

For the collection of these fines the proceedings shall be in accordance with articles 181 (rules 1, 2, and 3), 182, and 184.

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[1] Circular of the General Government of July 14, 1880, ordering that it behooves the municipal council to appoint and remove municipal physicians.

"Under this date the civil government of this province is informed as follows:

"YOUR EXCELLENCY: In view of the communication of Your Excellency of April 21 last forwarding an authenticated copy of the resolution adopted by the municipal council of Güines, under date of the 19th of the previous March, refusing to forward to Your Excellency the proceedings for filling the office of municipal and court physician of said town, as prescribed by the circular of September 30, 1873, because articles 71 and 74 of the municipal law in force confer upon municipal councils the power to appoint and remove all employees and officials paid from their funds, even though they be professional, and that said law in its first additional provision repeals all prior ones relating to municipal government, His Excellency the Governor-General, agreeing with the report of the council of administration, approving the resolution of the said municipal council of Güines, has deemed it proper to decide that, municipal physicians being employees of their respective municipal councils, it behooves the latter to appoint as well as to remove them after the requisites and proceedings established in the municipal law in force. Which by order of His Excellency, I communicate to your excellency for your information and consequent action."

Which, by order of His Excellency, is published in the Gazette for general information. Havana, July 14, 1880. Joaquin Carbonell.

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The justice of the peace shall discharge the duties entrusted by article 184 to the judge of first instance.

Against an administrative decision the person fined may appeal to the municipal council and institute the proceedings referred to in article 183, in a proper case.

ART. 74. The appointment and removal of all the employees and clerks paid with municipal funds and which are necessary for the fulfillment of the service entrusted to them, shall be made by the municipal councils, with the exceptions established in this law.

Officials destined to professional services shall have the qualifications and fill the conditions determined in the laws relating to the same.

ART. 75. Personal services are enforced in order to assist in the construction of municipal public works of all kinds; municipal councils have the power to require the same of all inhabitants over sixteen years of age and under fifty, with the exception of those taken care of in charitable institutions, soldiers in active service, and persons incapacitated for work.

The number of days shall not exceed twenty per year nor ten consecutive ones, each day redeemable by the person interested at the rate of pay given laborers in the locality.

With the exception of the public works mentioned in this article, no personal services of any kind can be required, the mayor or deputy mayor requiring them incurring liability.

ART. 76. The municipal councils, with the authority and approval of the governor, may form by themselves and with the adjoining ones associations and communities for the construction and preservation of roads, rural police, care of property owned in common, and other subjects of their exclusive interest. These communities shall be governed by a board composed of one delegate for each municipal council, presided over by the member elected by the board.

The board shall draw up the accounts and budgets, which shall be submitted to the municipal boards of each town, and should they not be approved by all or by any of them they shall be submitted to the governor, who shall decide, hearing the provincial committee.

ART. 77. The Governor-General shall take care to encourage and protect, through his delegates, the associations and communities of municipal councils, for the purposes of security, instruction, assistance, police, construction and preservation of roads, property owned in common, or other services of a similar character. These communities shall always be voluntary, and shall be governed by boards of delegates of the same, which shall alternately meet in the respective seats of the municipal associated subdistricts.

Whenever any complaints are made against the administration of said communities they shall be decided by the Governor-General hearing the council of administration, with the exception of questions of ownership, which are reserved to the courts of justice.

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ART. 78. Municipal councils may petition, in so far as matters of their competency are concerned, the Governor, Governor-General, the Government, and the Cortes.

Except when they make complaints against the mayor, the governor, or the deputation, they must do so through the former, and against the mayor, provided they address themselves to the Government or to the Cortes.

If within a period of eight days the two authorities first cited do not take action on representations of municipal councils, the latter may repeat the same in the shape of a direct complaint.

If within a period of two months the Governor-General does not take action upon representations of municipal councils, the latter may repeat the same directly, in the shape of a complaint, addressed to the colonial secretary or to the Cortes in a proper case.

ART. 79. All the resolutions of municipal councils in questions of their competency are final, with the exception of the appeals determined by the laws.

ART. 80. Resolutions referring to the following require the approval of the governor, hearing the provincial committee, in order to be final:

1. Reform and suppression of municipal charitable establishments and institutions of instruction.

2. Pruning and cutting of timber in municipal forests, subject to the laws and regulations.

ART. 81. Alienations and exchanges of municipal property shall be made in accordance with the following rules:

1. Lands remaining over from public roads and granted to private ownership and useless objects may be exclusively sold by the municipal council.

2. Contracts relating to municipal establishments of no use for the service to which they had been destined, and private credits in favor of the people require the approval of the governor, hearing the provincial committee.

3. The approval of the Governor-General is necessary, after reports from the governor of the province and from the provincial committee, for all contracts relating to other real estate and property rights of the municipality.

ART. 82. The authorization of the provincial deputation is necessary in order to institute suits in the name of towns having less than four thousand inhabitants.

The resolution of the municipal council must in all cases be adopted after a favorable report of two lawyers.

No authorization or report of lawyers is necessary to utilize injunctions to retain or recover and those relating to new or old works, nor to institute suits in which the municipal council is the defendant.

ART. 83. Whenever, in any of the cases mentioned in the foregoing article, it is necessary to obtain the approval of the governor of the province or of the Governor-General, it shall be the duty of the mayor

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to forward the data within a period of not exceeding eight days, counted from the date of the resolution.

ART. 84. Municipal councils in all matters which, according to this law, are not of their exclusive competency, and in which they act by delegation, shall be governed by the general laws and provisions relating to the same.

ART. 85. Inferior and superior courts can not admit injunctions against administrative rulings of municipal councils and mayors in matters of their respective competency.

CHAPTER II.—*Administration of towns annexed to a municipal district.*

ART. 86. Towns which, together with others, form a municipal district, and have their own land, water, pasture grounds, forests, or any other rights, exclusively their own, shall preserve the private administration over the same.

ART. 87. For said administration they shall appoint a board, which shall be composed of one president and two or four members, all of whom shall be elected directly by the residents of the town and from among them.

For towns of sixty or more residents there shall be four members, and two for towns having a smaller number.

ART. 88. The election of the presidents and members above mentioned shall be made in accordance with the electoral law, but in one day only, and without allowing more than eight days to elapse from the time the municipal council was installed, which shall see to the execution of this precept.

ART. 89. After the three or five members for the board have been elected, the office of president shall be given the person who obtained the highest number of votes, and should there be a tie it shall be decided by lot.

ART. 90. The objections established by this law for municipal offices shall also be applicable to the election of members of the board with relation to the respective town.

ART. 91. The municipal council of the respective district shall supervise the private administration referred to in this chapter, either on its own initiative or at the request of two or more residents of the town interested.

ART. 92. The administration and the inspection above mentioned, as well as the duties and obligations of the board and of its members, shall be governed by the provisions of this law in all that has not been determined by this chapter.

CHAPTER III.—*Sessions and mode of procedure of municipal councils.*

ART. 93. The sessions of municipal councils must be public when accounts, budgets, and other subjects related to the municipalities are in question, and the days and hours on which they are to be held shall be announced in the usual places.

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They shall necessarily take place, under pain of nullity, in the town halls, except in cases of force majeure.

ART. 94. The deputy mayors and the aldermen are obliged to be present punctually at all the ordinary and extraordinary sessions, unless prevented for good reasons, which they shall prove in a proper case.

Lack of attendance shall cause a fine to be incurred for each time in accordance with the following scale:

In towns of 20,000 or more inhabitants, 3 pesos.

In towns of over 15,000 inhabitants, 2 pesos.

In those of more than 8,000, 1 peso.

In other towns, 0.40 peso.

This provision is applicable to the members of the municipal board; but the fines shall be for an amount four times as great for the first and double this for the second.

ART. 95. The mayor, the deputies, and the aldermen all have the right of speech and vote in the sessions and resolutions of the municipal council.

They are equally responsible for the resolutions which they authorize with their votes without being permitted for any reason whatsoever to abstain from casting the same.

ART. 96. The municipal council shall be presided over by the mayor. In his absence the deputies shall preside, and in the absence of both, the alderman who is the dean, and then the others in order of age.

The governor shall preside when he is present at the sessions of the municipal council, but shall not have a right to vote.

ART. 97. The mayor may call an extraordinary session when he deems fit, and he must always do so when ordered to by the governor or when it is requested by a third of the councilors.

ART. 98. In every call for an extraordinary session the business to be transacted shall be mentioned, and the municipal council can not take up any other matters at the same session.

The calls shall be made at least one day in advance, except in cases of greater urgency, and the resolutions shall be subject to ratification at the following one.

ART. 99. Every session of an ordinary character, with the exception of the days fixed in accordance with article 54 of this law as well as any extraordinary one, which is not called by the mayor in the manner and under the conditions prescribed in the foregoing articles or in which a question not announced in the call is treated of, shall be null and of no value, and the resolutions adopted at the same shall also be null.

ART. 100. In order to hold sessions the presence of a majority of the total number of councilors which the municipal council must have according to this law is requisite.

If at the first meeting there should not be a quorum for the adoption of resolutions, a new citation shall be made for two days later, stating

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the reasons therefor, and the persons present at the same may adopt resolutions, no matter what their number may be.[1]

ART. 101. All questions which are to be passed upon by a municipal council shall first be discussed, and then voted upon.

Questions shall be considered as adopted which one over half of the members present at the session vote for.

In case of tie, voting shall be resumed at the next session, or at the same one, if the question is of an urgent character in the judgment of the mayor; and in case of a new tie, the latter shall cast the deciding vote. If the governor of the province should accidentally preside, the vote of the mayor or of the person acting in his stead shall be the deciding one.

ART. 102. Balloting shall be oral when questions relating to the councilors themselves or to members of their families within the fourth degree are not in question, being otherwise secret, the councilor interested being obliged to withdraw from the session while the matter is under discussion and being voted upon.

ART. 103. The secretary of the municipal council shall draft minutes of each session, in which he shall state the names of the president and of the other councilors present, the questions treated of, and the resolutions adopted relating to the same, the result of the votes, and a list of the oral ones, should there be any.

The opinions of the minorities and their reasons shall always be included in the minutes.

The minutes shall be signed by the councilors who are present at the session, by those present when they are read, and by the secretary.

The minutes of the opening session of each municipal council shall be signed by all those who were present at the same, those not knowing how to sign being mentioned.

ART. 104. The book of minutes of the municipal council is a public and solemn instrument. No resolution which is not explicitly and finally included in the minutes referred to shall have any value whatsoever.

This book shall be made of the proper stamped paper, and all its sheets shall bear the rubric of the mayor and the stamp of the municipal council.

ART. 105. At the end of each month, in the capitals of the provinces, in the seats of judicial districts, and in towns having more than 4,000 inhabitants, and every three months in other towns, the secretary shall draw up an extract of the resolutions adopted by the municipal council during the same period, and, after having been approved by the corporation, it shall be forwarded to the governor of the province for insertion in the official newspaper.

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[1] By royal order issued by the interior department on August 23, 1878, it was declared that when the number of councilors is less, when the session is inaugurated, than half and one of those which, according to the law, the municipal council should have, the corporation can not be considered as legally constituted, nor can it adopt any decision or resolution whatsoever.

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ART. 106. The foregoing rules shall be applied to the minutes and sessions of the municipal board. Their minutes shall be kept in different books from those of the municipal council, and with similar formalities, precautions, and requisites, unless otherwise ordered by this law.

ART. 116. The proceedings of examination and discussion shall never give rise to excuses to the municipal councils to delay the fulfillment of the obligations imposed upon them by the laws.

CHAPTER IV.—*Administrative functions of mayors, deputies, syndics, aldermen, and ward mayors.*

ART. 108. The mayor, who is the president of the municipal corporation, shall bear its name and represent it in all matters with the exception of the powers granted syndics.[1]

ART. 109. The mayor shall—

1. Preside over sessions and direct discussions, with a right of vote.

2. Take care, under his liability, that the laws and provisions of its hierarchical superiors are fulfilled by the municipal council.

3. Communicate, in the name of the municipal council, with the necessary authorities and private parties.

ART. 110. The mayor shall also, as the chief of the municipal administration—

1. Publish, execute, and order the resolutions of the municipal council complied with when they are final and there is no legal reason for their suppression; proceeding, if it is necessary, by judicial compulsion, and imposing fines, which shall in no case exceed those established by article 73, and arrest in cases of insolvency.

2. Suspend the execution of resolutions of municipal councils in the cases prescribed by articles 167 and 168 of this law.

3. Forward to the governor the resolutions of the municipal council which require the superior approval to become final, and publish, execute, and enforce them after they obtain said approval.

4. Forward statements made by municipal councils in accordance with the provisions of article 78.

5. Direct all that relates to the town and rural police, issuing for the purpose the proclamations and provisions he may deem proper in accordance with the ordinances and general regulations relating to the matter.

6. Direct and supervise the conduct of all the employees of the city and rural police, punishing them with suspension from office and salary, not to exceed thirty days, and recommend their removal to the municipal council when they can not do so in person.

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[1] By a resolution of the General Government, in accordance with a report of the council of administration, a complaint made by the municipal council of Havana was declared improper, because it was presented outside of the legal period, for the administrative notification of resolutions must be counted from the date they are communicated to the corporations or to the private parties.

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7. Exercise all the duties proper to the office of supervisor and chief of the investment of municipal funds, and of its accounting system.

8. Inspect, expedite, and direct, financially and administratively, the works, charitable institutions, and establishments of public instruction paid for with municipal funds, subject to the laws and provisions governing the matter.

9. Take care that the services relating to army equipages and lodgings and other public charges are faithfully rendered.[1]

10. Preside over public sales and auctions for sales, leases, and municipal services, excepting legal provisions to the contrary.[2]

11. Communicate with the governor and with the other authorities and corporations of the province in all questions of their governmental and administrative competency, doing so through the former when they have to communicate with the governors of other provinces or with the Governor-General, and discharge all the duties intrusted to them by the laws and regulations.

ART. 111. Where there is only one deputy the mayor and the deputy shall each one have under his charge one of the subdistricts into which the municipal district is divided.

Where there is more than one deputy the subdistricts shall only be divided among the deputies.

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[1] Royal order of March 23, 1883, deciding, in accordance with the council of state in full, that the payment for municipal barracks is not an obligation of the municipality. Resolution issued on account of the refusal of the municipality of Havana to pay the rental of the barracks for the militia.

[2] The laws in force in this island on auctions and public sales of services of the provincial deputations, and of the municipal councils, are the royal-decree regulations of January 4, 1883, and the royal order of August 11, 1882, on the publication of advertisements of auctions.

See the following resolution of the General Government:

MUNICIPAL COUNCILS.

The section on litigative matters of the council of administration has deemed proper to make the following report:

"YOUR EXCELLENCY: In view of the claim instituted before this section by Don Carlos de Zaldo, in the name and with the authority of Messrs. Rafecas & Co., as executor of the estate of Don Felipe Lombeda, against a resolution of Your Excellency, which confirmed prior decisions of the municipal council of Havana and of the civil government of the province, by which the plaintiffs were refused the payment of interest which they demanded of said corporation on account of the delay in the payment of a certain sum, the value of hydraulic lime supplied for the works of the canal of Vento, it is pertinent to report on the origin of the suit that, as was indicated in the introduction of this consultation, the complaint is directed against a ruling of Your Excellency, which refused to the plaintiff the payment of interest on account of the delay in the payment of a certain sum which the municipal council owed them for the supply of hydraulic lime for the works of the canal of Vento; that in the opinion of the section the claim was not admissible, giving its reasons therefor, either because the plaintiff has not established his identity or because contracts executed by the administration may be a matter of litigation, it is necessary not only that they involve a work or public service, but that the latter are the direct and immediate subject of the contract, which was not

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ART. 112. The deputy mayors shall each one of them discharge in their district the functions entrusted by the law to the mayor, under the direction of the latter, as the superior chief of the municipal administration.

Ward mayors are under the orders of the deputies, and shall discharge that part of the administrative functions which the latter may delegate to them.

ART. 113. Before absenting himself from his district a mayor requires permission from the governor; and if in granting the same he should not appoint a temporary mayor, the proper deputy, according to his numeration, shall substitute the former during his absence.

Deputies and aldermen require the permission of the municipal council to absent themselves from their district for more than eight days; but in urgent cases the mayor may authorize the absence of the deputies, informing those who are to replace them.

Even though the absence is to be less than eight days, the deputies and councilors shall communicate it to the mayor in writing.

ART. 114. Ward mayors can never absent themselves from the ward in their charge for more than twenty-four hours without permission from the mayor, who shall appoint a person to replace them during their absence.

ART. 115. Deputy mayors shall be replaced by the oldest aldermen, and the rest, according to the order established by article 96.

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the case in the actual matter, and that the person representing the plaintiff has impugned said opinion, alleging that the character with which the plaintiff company brought the litigative appeal was acknowledged by the municipal council and furthermore shown in the administrative proceedings, and that, by the royal decrees of December 25, 1869, and of May 5, 1876, there had been declared that the supply of materials for public works could also be the subject of administrative litigation, for which reason contracts executed with relation to the same were a proper subject for administrative litigation. Whereas the provision of article 60 of the regulations of December 30, 1840, are absolute, and that according to the same no suit which lacks the requisites of the documentary proof of the identity which a person appearing in a suit as a party representing another one claims, shall be proceeded with under pain of nullity. Whereas the plaintiff has not supplied the lack indicated, notwithstanding that his attention was called thereto in the opinion of the section. Whereas legislation in various decisions relating to competency laid down the doctrine which was mentioned in the said opinion with regard to the propriety of litigative jurisdiction in the subject of contracts executed by the administration. Whereas although the plaintiff alleges that the supply of materials for public works constitutes a public service, according to two royal decrees, aside from the vagueness of the terms of the citation, which has not permitted its exactness to be verified, it would always be necessary to prove that the subject of the contract in question was the supply of material for a public work, and then it would be possible to determine if the administration was competent to take cognizance of the suit or not. Whereas this justification has not been made by the plaintiff, notwithstanding the precept of article 55 of the said regulations of December 30, 146. The section, as a definite opinion, believes that this suit is not admissible.

"And in accordance with the foregoing opinion I declare the suit in question inadmissable and the administrative resolution appealed from final. Havana, January 4, 1888. Sabas Marin."

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ART. 116. Councilors can not absent themselves without permission from the municipal council on days of ordinary or extraordinary sessions, nor for a longer period than that intervening between two ordinary sessions.

Leaves of absence shall only be granted simultaneously to one-fourth of the total number of councilors.

ART. 117. Councilors shall discharge their functions within the municipal district to which they belong, without being obliged to leave the same in the discharge thereof.

CHAPTER V.—*Secretaries of municipal council.*

ART. 118. Every municipal council shall have a secretary, to be remunerated from its funds.

The appointment shall be made by the governor, on the recommendation in ternary of the municipal council, after competition.

ART. 119. In order to be a secretary it is necessary to be a Spaniard, of age, to be in the full enjoyment of civil and political rights, and to possess an elementary education.

The following can not be regular nor temporary secretaries:

1. Councilors of the same municipal council.
2. Notaries and public clerks, as long as they discharge the functions proper to these offices.
3. Employees in office of all classes.
4. Private parties or professional people who have contracts or engagements for services with the municipal council or with a community of residents.
5. Those who, directly or indirectly, are interested in services, contracts, or in the furnishing of supplies within the municipal district on account of the latter or on account of the province.
6. Those who have an administrative or judicial question pending with the municipal council or with the establishments under its dependency or administration.
7. Debtors to the municipal funds as taxpayers.

The office of secretary is incompatible with all other municipal offices.[1]

ART. 120. Mayors may suspend secretaries by giving to the governor a report with the necessary documents for his information and approval. The removal shall be valid when it is resolved upon by two-thirds of the total number of councilors, in which case the governor shall be informed, a copy of the minutes being forwarded to him.

The governor, for grave reasons, may also suspend or remove secretaries of municipal councils, reporting to the Governor-General.

From the decision of the governor in the two cases mentioned, the person interested may appeal to the Governor-General, who shall decide, hearing the council of administration.

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[1] By a royal order from the department of the interior of June 22, 1886, it was decided, in accordance with the council of state, that councilors of the same municipal council can not be regular nor temporary secretaries.

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ART. 121. The following are the obligations of secretaries of municipal councils:

1. To take part, without the right of speech or vote, at all the sessions of the municipal corporation, to inform the same of the correspondence and proceedings, in the manner and order prescribed by the president.

2. To draft the minutes of each session, read them at the beginning of the following one, and, after having been approved, have them transcribed faithfully in the book destined for this purpose, taking care to collect the signatures, as prescribed by article 103, and placing his full signature in the proper place.[1]

3. To prepare the proceedings for the works of the committees and the resolution of the municipal council.

4. To make a note above his signature on each record of proceedings of the decision of the municipal council.

5. To draft the minutes of the orders and resolutions of the municipal corporation and of the committees in a proper case.

6. To prepare the proceedings, make memoranda of the resolutions, and draft the minutes of the decisions of the mayor when there is no special secretary for the purpose.

7. To issue certifications of all the official acts of the municipal corporation, and of the mayor when there is no special secretary, and to issue any other certifications which may be proper.

The latter, however, in order to be valid, require the countersignature of the mayor.

8. To direct and supervise the employés of the office of the secretary, of which he is the chief.

9. To assist boards of experts, without special remuneration, in the formation of assessments and restorations.

10. Any other duties intrusted to them by the laws or which the municipal council confers upon them within the sphere and purpose of their office.[2]

ART. 122. Where there is no archivist, the municipal archives shall be under the custody of the secretary. He shall draw up an inventory

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[1] By a decision of the supreme court of November 11, 1878, it was resolved that secretaries of municipal councils who issue copies of minutes of sessions making it appear in the same that councilors were present thereat when they were not, and that therefore the signatures of the same do not appear in the minutes, commit the crime mentioned in article 314 of the penal code, even though the act did not cause any damage.

By decision of the same court of June 28, 1879, it was resolved that the crime mentioned in No. 7 of article 314 of the penal code was committed if a certificate of minutes was issued, if the latter were not entered in the book of sessions of the municipal council.

[2] By a royal order of July 9, issued by the interior department, it was ordered that secretaries of municipal councils are not liable for mistakes of the same; but if they are the cause of a delay in the rendition of services, they deserve the temporary suspension which the governor may consider it proper to decree.

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of the papers and documents and shall complete it each year with an appendix, of which, as well as of the inventory, he shall forward a copy, with the countersignature of the mayor, to the provincial deputation.

ART. 123. In municipal councils where there is no auditor, it shall be the duty of the secretary to keep the books of receipts and expenditures of funds, authorize warrants, and enter drafts.

ART. 124. Municipal councils may impose upon their secretaries the disciplinary corrections which they may deem proper and which are within their powers for the offenses or abuses which they may commit in the discharge of their office and which do not give rise to criminal proceedings.

ART. 125. The secretaries of the municipal councils shall also be those of the mayors, but in the capital of the province and in towns of an equal or higher number of inhabitants the mayor has the power to appoint a special secretary, whose salary shall be fixed by the municipal board.

ART. 126. The secretaries of mayors, where there are such, shall, in so far as their liability is concerned, be equal to those of the respective municipal council, with the exception of the differences consequent upon their duties.

ART. 127. The secretary of the municipal council shall also be the secretary of the municipal board.

TITLE IV.

THE MUNICIPAL TREASURY.

CHAPTER I.—*Municipal budgets.*

ART. 128. The provisions of the decree of September 12 and the instructions of October 4, 1870, issued for the government of the financial administration and accounting of the colonies, are applicable to the municipal treasury.

The municipal fiscal year shall be the same as the one in force for the budgets and general accounts of the island of Cuba.

ART. 129. The municipal councils shall each year draw up a budget which shall include all the expenses to be made for any reason whatsoever and the revenues to cover the same. For this purpose they shall establish from among their members one of the permanent committees mentioned in article 157.

ART. 130. The ordinary annual budgets shall necessarily contain the requisite sections, according to the resources of the municipality, in order to attend to and fill the obligations referred to in the first paragraph of article 70 of this law; the services established between those which, according to article 69, come under the jurisdiction of municipal councils; the expenses which, by virtue of the second paragraph of the said article 70, are clearly and finally designated in the laws as obligatory, besides the following:

1. Personnel and material of the dependencies and offices.

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2. Pensions, annuities (censos), and judicial expenses, which are to be paid from municipal funds, as well as acknowledged and liquidated debts, and interest and consequences of contracts.

3. Protection of trees.

4. Preventive measures and measures for the extinguishment of fires and life-saving measures in maritime towns.

5. Subscription to the official bulletin of the province in all the municipalities, and to the *Gaceta de la Habana* in the seats of judicial districts and towns having more than two thousand inhabitants.

6. Allotment of the municipality in the provincial assessment.

7. One section for emergencies and public calamities, not to exceed ten per cent of the budget for expenses.

8. Printing, announcements, and other necessary expenses to make municipal acts public.

ART. 131. The expenses included in the municipal budgets shall be covered with the income, surtaxes, and revenues authorized by this law and other provisions in force.

ART. 132. The revenues shall be:

Rents and products accruing from property, rights, or capitals which, for any reason whatsoever, belong to the municipality or to the charitable institutions or institutions of instruction and other similar ones depending on the same.

Municipal taxes or imposts on determined services, works, or industries, as well as the benefit of city and rural police, and fines and indemnifications for the infraction of the municipal ordinances and police regulations.[1]

A general assessment among all the residents and property owners in proportion to the means or powers of each one, to cover the municipal services wholly, or in the part not covered by the foregoing resources.

Tax on articles of food, drink, and fuel.

Municipal councils of towns having more than two hundred thousand inhabitants, if they renounce the general assessment, may make use of other imposts, surtaxes, or revenues besides those enumerated in the laws, with the approval of the government, which, before granting the same, shall hear the council of state.[2]

ART. 133. For the fulfillment of the second paragraph of the foregoing article the following rules shall be observed:

1. The establishment of taxes can only be authorized on those works and services paid with the municipal funds the benefit of which will not redound to the residents in common, but to determined persons or classes, provided the persons interested have not previously acquired

[1] By the royal orders of May 5 and 17, 1882, members of the army and navy were exempted from the payment of quotas on account of municipal assessments.

[2] By a resolution of the Governor-General of March 31, 1880, it was ordered that after the municipal taxes had been approved by the authorities they should in the future be considered permanent.

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the same for a valuable consideration, as well as on industries which are established in public ways or on land or properties of the town, it being understood that the municipal council can not secure the monopoly or any privilege whatsoever over said services except in so far as necessary for the public health.

2. In accordance with the provisions of the foregoing article the establishment of taxes on the following objects may be authorized:

Benefit and provision of waters for private use.

Sewers, bathing establishments in public waters.

Rural police.

Institutions of secondary, superior, or special instruction.

Licenses for the construction of buildings.

Slaughterhouses.

Public booths and chairs in squares, streets, fairs, markets, and promenades.

Rental of weights and measures.

Inspection of weights and measures or reweighing.

Interment in municipal cemeteries.

Public carriages and hearses and wagons for transportation in the interior of the towns.

Issue of certifications of acts of the municipal council or of documents existing in its archives.

Shares granted by the laws in the issue of documents of surveillance, hunting and fishing licenses, and navigation and freight transportation on rivers, and water privileges.

And other similar ones.

3. In no case can the following services be subjected to taxation:

Benefit and provision of waters for communal use.

Public lighting.

Sidewalks and paving.

Public surveillance.

Charity.

Public instruction.

Street cleaning, without prejudice to the benefits which may result.

And others of a similar character.

4. In the same manner, the establishment of taxes on the sale of spirituous or fermented drinks may also be authorized, either in establishments or fixed places, or by peddlers, carriers, or by the manufacturers or proprietors themselves; on cafés, restaurants, saloons, inns, boarding houses, and other establishments of the same character; on bathing establishments; on all kinds of public spectacles, and on permitted gambling and raffles, in so far as granted by the laws to municipal councils.

5. The taxes on the slaughterhouses shall come under the heading of consumption taxes, should there be any, and can not altogether exceed 25 per cent, in accordance with the second paragraph, rule 1,

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article 138. Where there is no consumption tax on meats, there can only be imposed by way of slaughter tax an amount which shall never exceed 10 per cent of the value of the head of cattle.

6. The taxes mentioned in rule 4 of this article, with the exception of those relating to bathing establishments, public spectacles, gambling, and raffles, shall not be authorized when any consumption taxes exist, but the establishments mentioned may at any rate be subjected to a special tax on account of surveillance, which shall not exceed five per cent of the amount they pay as a direct tax.

7. The taxes on industries which are carried on in public roads shall not exist jointly with the general assessment, without prejudice to which the quotas which correspond for this reason to the manufacturers may be charged with five per cent by reason of rental or use of the road.

8. The quotas imposed on the industries mentioned in this law, which are included in the schedules of the industrial, commercial, and professional tax, shall not exceed 25 per cent of the amount indicated in the latter; and

9. The payment of fines and indemnifications shall be made in the special paper which the treasury shall issue for the case, and which it shall deliver to the municipal councils who request it, charging on the same, by reason of the stamp, a tax not exceeding 10 per cent of its nominal value.

ART. 134. The creation of any of the taxes mentioned shall be resolved upon by the municipal councils in union with the board of associates, the record of proceedings being forwarded through the mayor to the governor, who, after a report from the provincial deputation, shall forward it with his own to the Governor-General for the proper resolution.[1]

ART. 134. In order that the general assessment referred to in the third paragraph of article 132 may be authorized, the municipal council shall institute proceedings in accordance with the following rules:

1. The assessment shall be extended to the following persons for all the utilities they may have in the district, irrespective of their nature:

First. To the residents of the municipal district.

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[1] Ruling of the council of administration of January 17, 1888, declaring a litigative suit instituted by Don José Granda y Miranda against a resolution of His Excellency the Governor-General inadmissible, and by which it was declared that the municipal council of Cienfuegos should not collect the slaughter and corral taxes, except in the manner ordered on February 14, 1880, because the administrative authorities in matters relating to taxes, as well as in any others, may adopt general provisions with regard to the form as well as to the essence of said imposts, and that they never give rise to a litigative appeal, and that the foregoing doctrine is applicable to the case in question, because in the appeal it is only desired that the establishment of a municipal tax which is supposed to be illegal in its foundation and in its form be declared null, and that therefore the declaration brought by way of litigative proceedings should in any case have been taken to the hierarchical superior of the Governor-General by way of administrative proceedings, or to the colonial department, and that questions of jurisdiction, such as those of public order, can and must be instituted and decided at any stage of the suit.

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Second. To owners living in other towns who, according to article 27, are considered residents.[1]

Third. To those who, according to the same article, have the character and are considered as owners.

Fourth. To farmers, lessees, or coproprietors of agricultural estates who do not reside in the district.

The profits accruing from pensions, interest on capitals, salaries, or state revenues shall be imputed to their possessors in the town where they reside.

Persons who have been declared paupers, those taken care of in charitable institutions, and members of the army and navy are exempted from the assessment.[2]

2. In order to fix the income of each taxpayer, the following bases shall be observed:

First. On owners of city property there shall be assessed as taxable income the amount of the rents they receive or may hereafter receive for this purpose, taking into consideration the nature and conditions of the estates, if they are occupied by them personally or by others who do not pay rent.

Second. Owners who cultivate agricultural estates, or in the proper case the farmers, lessees, or coproprietors, shall be assessed a sum amounting to one and a half times the amount of the rent produced by the estate, or which it might hereafter produce, according to the average rents of the town, should said estate be rented.[3]

Third. When the owners of estates, be they either rural or urban, are not residents of the district, the assessment shall be reduced by one-

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[1] *Assessments.*—By a resolution of the General Government of July 4, 1882, in accordance with the council of administration, it was resolved that there should be considered as the net product assessable on rural estates for the contribution of the assessment, in order to silence the complaints of owners residing elsewhere, a sum equal to one and a half times the rent derived or which might in the future be derived, and that in order to fix said sum the lands should be classified according to their character into ten classes or categories, the following quotas being assigned to every caballería of each class: First, 150 pesos; second, 135; third, 120; fourth, 105; fifth, 90; sixth, 75; seventh, 60; eighth, 45; ninth, 24, and tenth, 6—without sugar estates or other rural estates being obliged to contribute for any other reason to the assessment, from which are excluded the "*patrocinados*" and the cattle which constitute the establishment of said estates and which are employed in their work and cultivation.

[2] *Assessments.*—By royal order of May 14, 1882, it was decided that members of the clergy are obliged to contribute with the quotas which correspond to them in the general assessments resolved upon by municipal councils to cover the deficits in their budgets.

[3] The circular of the General Government of June 6, 1883, ordered a faithful observance of that of July 4, 1882, and that the assessment of rural estates should be proceeded with in accordance thereto, and that in computing the one and a half times referred to therein it should be understood by the municipal councils that an amount equal to the value of the rent represents the condition and value of the ground, and that the other half represents the capital and the sum invested in the encouragement of production.

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fifth of the sum which, according to the foregoing bases, it should have amounted to.

Fourth. To those who receive salaries, pensions, annuities (censos), or interests of any class or from any source, the amount of these sums shall be assessed as net income.

Fifth. Persons included in the industrial, commercial, and professional tax shall be assessed the net profit assessable in proportion to the quota they pay by reason thereof, which shall not be less than five nor exceed twenty times the amount of said quota, in accordance with the scales approved for each class.

Sixth. Day laborers and journeymen, and in general all those who live upon a fortuitous salary, shall be assessed upon a third part of the sum which, according to the customs of each locality, their income may reach during the year, on an average.

Seventh. When it is not possible to ascertain the income of any resident, the assessment shall be made without prejudice to the provisions of article 27 and rule 3 of this article, taking into consideration the external marks of wealth, such as the value of the furniture, rental of the house, number of servants, and other similar ones.

Eighth. From the assessed income of each resident or property holder, there shall be deducted in every case the amount of the direct tax he pays the State.

3. The determination of the taxable income shall be made by the taxpayers themselves, divided into sections in the manner prescribed by chapter 3, title 2, of this law.

Each section shall draw up a statement, including the income of all its members, specifying, in so far as possible, the nature and number of the objects which produced the same.

ART. 136. After the proceedings have been instituted in the manner stated they shall be forwarded by the mayor to the Governor-General, who shall, before deciding, hear the provincial deputation.

The approval of the governor, in accordance with the recommendation of the municipal council and the report of the provincial deputation, shall be final.

In case of disagreement with any of said corporations, the proceedings shall be forwarded to the Governor-General, who shall decide, hearing the council of administration.

ART. 137. After the assessment has been approved by the governor, or by the Governor-General in a proper case, its collection shall be proceeded with, the following rules being observed:

1. The members of each section of taxpayers, proceeding as syndics and meeting with the municipal council, shall examine and compare the statements of income, deciding the complaints which may arise and fixing the total amount assessable.

The board shall assess the amount corresponding to each section either by so much per cent in proportion to the total appraised income or by fixed classes.

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2. The syndics of each section shall make and communicate the assessment to the members of the same. The municipal council shall decide the complaints which this assessment may cause.

3. All the operations of appraisement and assessment shall be published in the ordinary manner, and shall furthermore be communicated in the office of the secretary of the municipal council to every person interested who requests it.

4. From the decisions of the municipal council and of the board of appraisement an appeal lies to the provincial deputation. The appeal must be instituted within the fifteen days following the publication, and it shall not hinder the payment of the quota assessed until a definite resolution is reached.

These complaints, as well as those which may be brought on account of the work of each section, must be based on concrete, precise, and determined facts, adducing the proofs necessary for their justification.

5. The assessment shall include an increase, not to exceed 6 per cent of the total quota, for expenses of distribution, collection, and quotas which can not be collected.

Taxpayers who pay their quotas every three months, six months, or every year in advance into the treasuries of the respective municipalities are exempted from the payment of this increase, and in the second and third cases they shall be credited so much per cent per annum, which may be fixed by reason of the advanced payment.

6. Owners and farmers, lessees, coproprietors, or tenants shall arrange by means of private contracts the proportion to be paid by each one of the quota assessed the latter, on the estates, and the manner and time of reimbursing each other for this quota. In the absence of contracts the tenants may, when they make the payment of their rent, retain the full amount, and the farmers, lessees, or coproprietors two-thirds of the quota.

ART. 138. For the fulfillment of the fourth paragraph of article 132 proceedings shall be instituted, the following rules being observed:

1. The municipal council and the associates united in a board shall determine the subjects which are to be the object of the consumption tax as well as the schedules which are to govern its collection and the manner of doing so.

The schedules shall in no case exceed 25 per cent of the average price of the article in the respective locality, according to its class.

2. The tax can only be placed upon the articles of food or of drink which are consumed in each town. Any other tax on the same which might embarrass traffic, circulation, and sale, no matter under what name it may be desired to establish the same, is absolutely prohibited.

3. In towns where customs houses are established foreign articles, after being nationalized by the payment of the customs duties, may be subjected to the municipal consumption tax within the prescriptions of this law, and on the value which they have in the market, by deducting the amount of said customs duties.

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ART. 139. After the proceedings have been instituted in the manner stated, they shall be forwarded by the mayor to the governor, who, hearing the provincial deputation, shall forward them with his report to the Governor-General for the proper resolution.

ART. 140. After the consumption tax on any of the provisions approved has been established, the municipal council shall fix the individual quotas and their collection.

The assessment shall include an increase not to exceed 6 per cent of the total quota for the expenses of distribution, collection, and quotas that can not be collected.

Against the decision of the municipal council and the board of associates an appeal lies in the shape and manner prescribed by rule 4 of article 137.

ART. 141. At the end of the fiscal year the open credits which have not been invested during the course of the same are annulled.

During the period of extension the operations of collection of the taxes imposed shall be concluded, as well as those for the liquidation and payment of the services effected during the year. The balances remaining after this period shall be the subject of an additional budget, after the consequent liquidations which shall be concluded during the following month.

ART. 142. When, in order to cover unforeseen expenses, satisfy some debt, or for any other important object not determined in the ordinary budget, the resources included in the same are not sufficient, the municipal councils shall draw up an extraordinary budget in the same manner and with the same procedure fixed for the ordinary ones.

ART. 143. The debts of towns which are not secured by pledges or mortgages can not be judicially demanded of municipal councils.

When any town is sentenced to the payment of a sum, the municipal council, in the period of ten days after the sentence has been carried out, shall draw up an extraordinary budget, unless the creditor agrees to postpone the collection, in order to permit the entry in the ordinary following budgets, of the sums necessary for the payment of the principal and interest stipulated.

ART. 144. If the resources at the disposal of a town are not sufficient to cover its debts, or the municipal council does not consider it possible to collect the increased quotas imposed upon the residents, and the creditors are not satisfied with the means offered them to liquidate their debts, the proceedings shall be forwarded through the mayor to the governor, who, hearing the provincial deputation and the persons interested, shall order what is proper so that the payments can be made without prejudice to the competency of the superior and ordinary inferior courts to decide regarding the legality and preference of the credits.

ART. 145. Resources originating from taxes of a fortuitous and transitory character can not be applied to the payment and fulfillment of permanent services or obligations.

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ART. 146. The project of the budget, either ordinary, additional, or extraordinary, with the report of the syndic, shall be exhibited to the public in the office of the secretary of the municipal council for the period of fifteen days from the date on which the announcement is made in the ordinary form.

ART. 147. The municipal council shall draw up the budget, which shall be approved by the municipal board without prejudice to the provisions of article 156.

ART. 148. The municipal boards shall meet, after a citation and announcement, at the times and in the manner prescribed by article 65.

ART. 149. In order to adopt resolutions, the vote of an absolute majority of the total number of members who compose the board is necessary. If this number does not meet at the first session a new call shall be issued for eight days later, at which a majority of those present may adopt resolutions.

In towns of less than 800 inhabitants the vote of one over half of those present shall form a quorum, if they reach at least the fourth part of the total number of residents who have a right to compose the board. In case this number should not assemble, the provisions of the foregoing paragraph shall be observed.

ART. 150. Within the second month of the fiscal year the mayors shall communicate to the governor the approved budget, in order that legal extralimitations, should there be any, may be corrected.[1]

The municipal boards may appeal from the resolutions of the governor by forwarding the appeal to the governor for transmission to the Governor-General, who shall decide without loss of time, first hearing the council of administration.

If fifteen days before the beginning of the fiscal year the Governor-General should not have issued his resolution, the budgets approved by the boards shall be in force with the corrections introduced by the governor. The resolutions of the board may also be appealed from to the governor when any provisions of the law are infringed thereby, but only with relation to the part containing the infraction.

The Governor-General shall decide, without loss of time, first hearing the council of administration.

All the municipal councils shall forward to the Governor-General, and the latter to the colonial department, extracts of the budgets of receipts and expenditures definitely approved.[2]

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[1] By a resolution of the Governor-General of September 26, 1879, it was ordered that the municipal councils must present in March their respective budgets to the provincial governments.

[2] By a resolution of the General Government of November 13, 1879, it was ordered that the said extracts should be forwarded by chapters and in duplicate. A circular of the General Government of June 21, 1883, recommended an exact compliance with the provisions of this article relating to the publicity of the budgets, transmission to the civil government, and of the statements of receipts and expenditures to the General Government.

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ART. 151. The mayor may authorize the execution, making a report to the governor, and, without prejudice to the subsequent appeals which may be proper according to this law, of the budgets drawn up to attend to the sanitary requirements of absolute urgency, in time of public calamity, and works of an urgent character, when the amount does not exceed 50 cents for each resident, nor one-third of the ordinary budget.

ART. 152. In order to effect the collection, the judicial measures regarding direct and indirect taxpayers issued in favor of the treasury shall be applicable.

CHAPTER II.—*Collection, distribution, and accounting of municipal funds.*

ART. 153. The collection and administration of the muncipal funds are in charge of the respective municipal councils, and shall take place through their agents and delegates.

ART. 154. The distribution and investment of the funds shall be resolved upon every month by the municipal council, subject to the budgets.

ART. 155. Payments shall be ordered by the mayor.

The supervision shall be in charge of the auditor, where there is one, and in his absence the office shall be filled by an alderman elected by the municipal council.

In towns the budget of expenses of which is not under 20,000 pesos there shall be an auditor of municipal funds, appointed by the municipal council from among the persons who possess the qualifications determined by special regulations.

The same regulations shall prescribe all that refers to the classes and salaries of said officials.

The removal of municipal auditors who are appointed in accordance with their provisions shall appertain to the municipal councils, but it shall not be ordered, except for serious reasons and after proceedings. The persons interested may appeal from the decision to the governor, who shall decide, hearing the provincial committee.

ART. 156. The municipal councils shall appoint and freely remove the treasurers and agents for the collection of all the revenues and taxes of the municipality.

The same corporations shall also fix the remuneration which said employees are to enjoy and the guaranties they are to give.

If there should not be in the town any person wishing to take charge of the custody of funds, the office of depositary shall be declared as appertaining to the council and obligatory, but it shall not require the giving of a guaranty, and the expenses which may arise shall be for the account of the municipality.

ART. 157. The agents for the municipal collection are liable to the municipal council, and the latter is civilly liable to the municipality in case of negligence or omission duly proven, without prejudice to the rights which may be exercised against the agents.

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ART. 158. All the municipal funds shall necessarily be deposited in the treasury of the municipal council, the three keys of which shall be in the custody of the depositary, the comptroller, and the supervisor.

ART. 159. The auditor or supervising councilor, assisted if necessary by the secretary and other clerks of the municipal council, shall draw up the accounts of each term at the proper time, which shall be submitted, with the documents justifying them, to the municipal council after having been audited by the syndic.

ART. 160. After the accounts have been definitely fixed by the municipal council they shall be forwarded, with a report of the syndic and the documents justifying them, for auditing and revision to the municipal board.

The latter, on the first working day of the second quarter of the fiscal year, shall assemble in the building of the municipal council, under the presidency of the mayor, with the presence of the secretary, and shall appoint a committee from its members, who, after examining the accounts, shall make a report within a period not to exceed fifteen days.

During the fifteen days preceding the assembly, the accounts shall be exhibited in the office of the secretary, and any resident may examine them and put his observations in writing, which shall be communicated to the board.

ART. 161. The sessions which the board dedicates to the discussion of the report of the committee shall be presided over by a member elected by the same.

ART. 162. After the accounts have been examined and discussed and all the proceedings instituted and the data procured which may be considered necessary by the board, it shall assemble to resolve upon and adopt its definite decision by a vote of the absolute majority.

This report shall be subscribed by all those present, no matter what their private opinion may be, which they may, however, record by means of a written vote, the original of which shall be attached to the record of proceedings, this fact being stated in the minutes.

ART. 163. The municipal board shall assemble in the first fifteen days of February, in order to revise and audit the accounts of the previous fiscal year in the manner prescribed by the foregoing articles.

ART. 164. The approval of the same, when the expenses do not exceed 20,000 pesos, appertains to the governor, after hearing the provincial committee; and if they exceed said sum their approval appertains to the court of accounts of the kingdom, after a report of the governor and of the provincial committee.[1]

ART. 165. The municipal council shall publish, at the beginning of

[1] By a resolution of the General Government of October 27, 1880, it is ordered that said superior center is the channel through which the accounts corresponding to the municipalities of that island are to be forwarded to the court of accounts of the kingdom.

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each quarter, a statement of the collection and investment of its funds during the preceding one.

In public works which may be made by administration, there shall be published every week a memorandum of the expenses incurred, detailing the amount paid for wages, material, traders, contractors, site of the work, and other similar circumstances.

In the office of the secretary there shall be exhibited all the year round, on working days and during office hours, to any resident, and specially to the associate members of the municipal boards, the original accounts and documents from which the municipal council shall permit memoranda to be made, as well as copies of the same.

Accounts which involve more than 20,000 pesos shall be printed in an abstract, which shall include the report of the board and the remarks of the municipal council, which shall be placed on sale to the public.

ART. 166. The municipal councils shall forward to the governors a full copy, certified by the secretary, with the countersignature of the mayor, as well as copies of the budgets and accounts definitely approved, with the literal minutes of the municipal board.

TITLE V.

APPEALS AND LIABILITIES ARISING FROM THE ACTS OF MUNICIPAL COUNCILS.

CHAPTER I.—*Appeals from the decisions of municipal councils.*

ART. 167. Without prejudice to the provisions of article 110, the mayor is obliged to suspend in person or at the instance of any resident of the town, the execution of the decisions of the municipal council in the following cases:

1. When questions are involved which, according to this law and other special ones, do not come under the jurisdiction of the municipal council.

2. For delinquency.

The reasons for the suspension shall be given in either case, stating concretely and precisely the legal provisions on which it is based.

In cases of incompetency, infraction of the law, prejudice of the general interests, or danger to public order, the mayor shall suspend the decisions of the municipal council, reporting thereon to the governor for the proper resolution.

ART. 168. The mayor shall also suspend the execution of the decisions referred to in the first paragraph of the foregoing article when thereby the civil rights of a third person might be injured, be he a resident or not of the town.

The suspension in such case shall only be granted when requested by the person interested, complaining at the same time against the decision.

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ART. 169. The complaint authorized by the foregoing article shall be brought before the mayor within a period of thirty days, counted from the date of the publication of the resolution.

The mayor, under his personal liability, shall forward the appeal with his report within the period of eight days to the governor, who shall decide, hearing the provincial committee.

ART. 170. Persons who consider themselves injured in their civil rights by the resolutions of municipal councils, even though their execution has been suspended or not suspended by virtue of the provisions of the foregoing articles, may object to the same by means of a complaint made to the judge or court of competent jurisdiction, according to what may be provided by the laws, taking into consideration the character of the matter.

The judge or court taking cognizance of the matter may suspend by a preliminary ruling the execution of the resolution appealed from at the petition of the person interested, if it has not already been suspended, according to the provisions of article 168, when in his or its judgment it is proper and convenient in order to avoid a grave and irreparable injury.

In order to make this complaint a period of thirty days is granted after the notification of the resolution or the communication of the suspension in a proper case, and if said period has elapsed without any complaint having been made, this suspension is raised as of course and the decision adopted.

ART. 171. If any decision has been suspended or appealed from by virtue of the provisions of the foregoing articles, the mayor shall forward the data to the governor of the province within the period of eight days for the proper purposes.

In case the suspension took place on account of delinquency, the governor shall forward the data within the same period of eight days to the judge or court.

ART. 172. When the resolution refers to questions which are by this law, the provincial law, or by other special ones, not of the competency of local corporations or authorities, the governor, after hearing the provincial committee, and leaving the suspension of the resolution in force, shall forward the proceedings to the Governor-General for his subsequent resolution.

ART. 173. When the Governor-General believes that the suspension is improper, he shall immediately raise the same without further proceedings, revoking the resolution of the governor of the province.

In a contrary case he shall forward the proceedings to the council of administration, and, after hearing its opinion, he shall decide what may be proper.

He shall also decide by himself, and under his liability, when the urgency of the question does not admit of further delays.

The reasons for the resolution shall always be stated, and shall be

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published in the Gazette of Havana and in the official newspaper of the province.

ART. 174. From the resolution of the Governor-General an administrative litigative appeal lies, in the manner determined by the laws.

CHAPTER II.—*Dependency and liability of councilors and their agents.*

ART. 175. Municipal councils, mayors, and aldermen are subject to the authority and administrative direction of the governor of the province in all matters which the law does not intrust to them exclusively and independently.

The Governor-General is the superior chief of municipal councils and the only one authorized to transmit to them the direction of the Government, which they must fulfill in accordance with the laws.

ART. 176. The municipal councils, mayors, and councilors incur liability—

1. For a manifest infraction of the law in their acts or resolutions, either making use of powers to which they have no right or abusing their own.

2. For disobedience or disrespect to their hierarchical superiors.

3. For negligence or omission which may result in damage to the interests or services which are under their custody.

ART. 177. The liability shall be demandable before the administration or before the courts, according to the nature of the action or omission which gave rise thereto, and shall only be extended to the members who took part in the same.

ART. 178. Without prejudice to the provisions of articles 49 and 50, regarding mayors and deputy mayors, when the latter or the aldermen of a municipal council are guilty of acts or omissions administratively punishable, they shall incur, according to the cases, the penalties of warning, reprimand, fine, or suspension.

ART. 179. A warning is proper in cases of error, omission, or slight negligence, which is not repeated and if the damage caused thereby can be easily repaired.

Reprimands are proper in cases of second offenses, already corrected, and in cases of extra limitation of authority, and abuse of powers, and negligence, the consequences of which are not irreparable or serious.

A fine is proper, provided the laws and general provisions in accordance to the same fix it, and in cases of repetitions of offenses, punished with reprimands, and in extralimitations, abuse of authority, negligence, or serious disobedience, which do not require suspension nor give rise to criminal liability.

ART. 180. The maximum of the quota of the fines which the governors may impose on mayors, deputy mayors, and aldermen for the offenses which they respectively commit, and according to the pro-

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visions of the present law, shall be in proportion to the number of councilors of each town, as follows:

Number of councilors.	Mayors.	Aldermen.
	Pesos.	*Pesos.*
5 to 7	10	2
8 to 10	15	2.40
11 to 14	20	5
15 to 18	25	8
19 to 21	30	10

ART. 181. For the imposition and collection of fines the following rules shall be observed:

1. No fine shall be imposed without a resolution in writing stating the reasons therefor.

2. The ruling shall be communicated in writing to the person fined, and a receipt shall be issued him on its payment.

3. The fines and penalties shall be collected in the corresponding stamped paper.

4. The fines must necessarily be paid from the personal funds of the persons fined.

5. The fines shall be extended to all the members of the municipal council who, according to this law, are responsible for the act or the resolution which gave rise thereto.

ART. 182. For the payment of all fines a period shall be granted in proportion to the amount of the same, and which shall not be less than ten days nor more than twenty, at the expiration of which judicial compulsion against the delinquent persons is proper. The delinquency shall be fined by not more than 5 per cent daily of the total amount of the fine, without ever exceeding double the amount of the latter.

ART. 183. The person interested may complain against the imposition of a fine to the same governor, requesting that it be revoked, stating the reasons justifying it.

From the ruling of the governor confirming the fine imposed, an appeal lies on account of an error of form to the court of administrative litigation, subject to the laws.

After the fine has been definitely declared as improper, the return of the amount thereof to the person interested shall be ordered.

ART. 184. No writs of attachments for the collection of fines shall be administratively issued.

When the persons fined do not pay the fine notwithstanding the judicial compulsion, the governor shall address a communication to the judge of first instance of the judicial district, stating the cause which gave rise to the imposition of the fine and the amount and liquidation of the latter, and requesting his authority to enforce the same.

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The judge shall proceed to the collection of the fine through the proceedings of judical compulsion.

ART. 185. The governors of the provinces may suspend mayors, giving a report to the Governor-General within the period of eight days and stating the reasons therefor.

The Governor-General shall unrestrictedly raise the suspension or order the removal of the mayor without further remedy.

ART. 186. The governors may also suspend deputy mayors and aldermen when they commit serious acts of extralimitation of a political character, and especially in the following cases:

1. To have given publicity to the act.
2. For inciting other municipal councils to commit the same.
3. For causing a disturbance of the public order.

They may also order the suspension when the deputies and aldermen commit serious acts of disobedience, insisting therein after having been reprimanded and fined.

ART. 187. The suspension of deputies and aldermen shall not exceed four months.

If this period has elapsed without the institution of a suit or administrative removal having been ordered, the persons suspended shall return to the discharge of their functions, the persons who took their place discontinuing the same.

ART. 188. The governors of the provinces shall forward to the Governor-General the proceedings of suspension within the period of eight days.

The Governor-General, after consultation with the council of administration and without loss of time, shall raise the suspension or order the administrative removal.

Against this resolution a litigative administrative appeal lies.

ART. 189. In case criminal liability exists the Governor-General shall forward the record to the court of first instance of the judicial district to which the municipal council of which said persons are members belongs.

The judges and courts shall apply in these cases the provisions of the penal code.

ART. 190. After the suspension has been raised by the Governor-General, in accordance with article 188, or the persons interested have been absolved from criminal liability, they shall retake possession of their offices, if during the proceedings it should have been proper for them to have discontinued therein in accordance with article 45, the provisions of article 187 being observed with regard to them.

ART. 191. Councilors judicially or administratively removed shall be disqualified to discharge similar functions again for six years at least.

ART. 192. The vacancies which occur in the municipal council on account of legal suspension and removal of its members shall be filled in the manner prescribed by article 46.

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ART. 193. The suspension and removal of ward mayors appertains exclusively to mayors.

The suspension shall not exceed fifteen days. The fines which may be imposed upon the same shall be reduced to half of those prescribed for councilors.

The criminal liability which they may incur by reason of their acts shall be enforced before the judge of first instance, according to the provisions of article 189.

The raising of the suspension or the judicial absolution, in a proper case, does not give them a right, but only qualifies them again to be reinstated in office.

ART. 194. All the agents of the municipal council appointed and paid by the same shall obey its orders and are administratively liable to the same in accordance with this law, and judicially to the courts for the crimes and offenses they may commit.

ART. 195. Besides the administrative appeals established by this law, any resident or property owner of the town has a right of action to the courts of justice in order to denounce and criminally prosecute mayors, aldermen, and associates whenever in the establishment, distribution, and collection of taxes or imposts they have been guilty of fraud or of illegal exactions, and more especially in the following cases:

1. If any of the councilors or associates, during the year they are such, pay a quota lower by way of assessment, tax, or license, compared with the year preceding the discharge of their office, the total amount assessable being equal or higher, unless they prove that their wealth has diminished sufficiently to justify such reduction.

2. When the total products of the assessments and taxes distributed exceed the amount mentioned in the budget and the 6 per cent surtax authorized by rule 5 of article 137 of this law.

3. When the quotas fixed by the taxes are higher than the law allows.

4. Whenever any kind of imposts not included in the budget are established and collected.

The courts of justice, after the act has been proved, and without prejudice to the provisions of the penal code, shall make the following declarations:

First case. Imposition of a double quota upon the guilty parties.

Second and third cases. Annulment of the assessment, in so far as it exceeds the amount authorized, and return of the taxes collected, with a fine equal to the excess conjointly imposed upon the guilty councilors and associates.

Fourth case. Annulment of the tax imposed, and return of the amounts collected, with a fine equal to their value, demanded in the manner mentioned in the foregoing case.

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TITLE VI.

POLITICAL GOVERNMENT OF MUNICIPAL DISTRICTS.

FIRST AND LAST CHAPTER.

ART. 196. A mayor is the representative of the Government and as such shall exercise all the powers intrusted to him by the laws, under the direction of the governor of the province, as is determined by the law, in all that refers to the publication and execution of the laws and general provisions of the supreme Government or of the General Government or of the governor of the province and the deputation, as well as in all that refers to public order and to the other functions intrusted to him.

ART. 197. In all that relates to the political government of the municipal district the authority, duties, and liability of the mayor are independent of the respective municipal council.

ART. 198. Deputy mayors, in their respective sections, shall always act by delegation and under the direction of the mayor as the representatives of the government in the same manner as the mayor does in the municipal district.

ART. 199. Ward mayors, in their respective wards, exercise the functions of the political government when, in accordance to law, they are delegated thereto by the mayors or deputy mayors, in all cases complying with the provisions of the former and of the governor of the province.

ADDITIONAL PROVISIONS.

1. All prior laws and provisions relating to municipal government are hereby repealed.[1]

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[1] Circular of the General Government of August 31, 1878, informing that the first of the additional provisions of the municipal law repeals the royal decree of February 26, 1867, relating to the exaction of direct taxes.

In the proceedings instituted by the provincial deputation of Santa Clara consulting as to whether the first one of the additional provisions of the municipal law in force in this island repeals the royal decree of February 26, 1867, by virtue of which municipalities have been up to the present time receiving the direct taxes on rural, city, and industrial property, his excellency the Governor-General, after hearing the opinion of the council of administration, has deemed proper to resolve the following:

1. That the first one of the additional provisions of the municipal law in force in this island repeals the royal decree of February 26, 1867, and that therefore the municipal councils can not continue to exact the direct taxes which by said royal decree had been granted them on rural, city, and industrial property.

2. That the taxes which are cited in article 132 of the municipal law are the quotas referred to in the eighth rule of article 143 and in the fourth paragraph of article 132.

3. That all the receipts enumerated in article 132 of the law and detailed in article 133, subject to the order fixed in the same, are ordinary receipts of municipalities.

4. That the prescriptions of articles 136 and 137 are applicable to the proceedings

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2. The governor shall issue in accordance with this law the regulations which may be necessary for its execution.

TRANSITORY PROVISIONS.

1. The call of the present municipal councils shall be proceeded with as soon as possible in accordance with this law and with the electoral law of the Peninsula, the Governor-General issuing the provisions which may be necessary for the purpose.

2. Until the publication of the electoral law referred to in article 40, the persons designated in the article of the same number of the municipal law of the Peninsula as taxpayers shall be electors, provided they pay a quota of 5 pesos and the other ones fixed in the said article.

The persons designated in article 41 of the said municipal law of the Peninsula shall be elected.

A true copy.

R. GALBIS,
Secretary of the General Government.

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which, according to article 135, are to be instituted for assessments, and that provincial deputations in reporting on said proceedings must see to it that all the formalities established in the law are observed in the same.

5. That each municipal council shall immediately proceed with the institution of the assessment proceedings prescribed by article 134 of the law, adhering entirely to the provisions of the said article and of article 136 on the subject, in order that they may be executed in time to draw up the budgets of the following fiscal term of 1881-82, taking into consideration this class of revenue.

6. That the municipal councils which have not as yet approved the general assessment may continue to exact, during the current fiscal year of 1880-81, the taxes on rural, city, and industrial property authorized by the royal decree of February 26, 1867, being obliged in the following term of 1881-82, and in the subsequent ones, to discontinue the exaction of said taxes and to receive the revenues arising from the assessment; and

7. That this General Government shall fix, at the proper time, the maximum rates which may be levied on each class of property in the general assessment.

Which I have the honor of communicating to Your Excellency by order of His Excellency, so that what is directed may be duly enforced.

May God preserve Your Excellency many years.

Havana, August 31, 1873.

JOAQUIN CARBONELL.

To His Excellency, the Civil Governor of the province of ——.

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APPENDICES.

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ELECTORAL LISTS.

Decree of the General Government of August 9, 1878, ordering the renewal of the municipal councils, and issuing rules for the better enforcement of what has been ordered.

In compliance with article 2 of the decree of this General Government, dated March 1 last, the total renewal of the municipal councils shall be proceeded with subject to the provisional municipal law ordered promulgated in this island by a royal decree of June 21, and published in the Gazette of Havana of the 30th of the same month, the following provisions being observed therefor:

ARTICLE 1. The formation of the lists of electors and of eligibles for the elections of municipal councils and of provincial deputations shall conform to the provisions of the electoral law of August 20, 1870, modified by that of December 16, 1875, and shall have as a basis the general poll of the inhabitants by right drawn up by virtue of the royal order of July 6, 1877, with the changes which have taken place from January 1 up to the present time and any other ones which may be proper, taking into consideration that, for this time, the condition of two years' continuous residence as the head of a family with a household in order to be an elector shall not be required, and neither four years in order to be eligible, which said electoral law requires in its articles 40 and 41; and to change furthermore said articles, to the effect that in order to be an elector or an eligible in all towns of 100 or more residents, it is necessary to pay 5 pesos per annum as a taxpayer for any reason whatsoever by way of direct tax.

ART. 2. The formation and publication of the lists must be effected by the 15th of September next, and the claims of inclusion or exclusion, which may be brought by residents having a right thereto before the municipal council, must be made within the three days following, until 12 o'clock midnight of the 18th.

ART. 3. From the 18th to the 25th, inclusive, of the said month of September the municipal councils shall pass upon the said claims.

ART. 4. From the 26th to the 28th, inclusive, persons who believe themselves injured by the resolution of the municipal council may complain to the council of administration acting as the provincial deputation, delivering their petitions to the civil governor of the province, who shall forward the same without any delay whatsoever to this General Government, which shall in its turn forward them to the council, which corporation shall pass upon them during the first fifteen days of October.

ART. 5. The appeals taken to the audiencia shall be delivered by the persons interested to the governor of the respective province, who shall forward them without delay to the audiencia, and the latter shall pass upon them, hearing the parties interested and the department of public prosecution in the first fifteen days of November.

ART. 6. From the 25th to the 30th of said month of November the final lists shall be published, and the electoral tickets shall be distributed. The election shall be held on the 6th, 7th, 8th, and 9th of December, in the manner prescribed by law.

The count shall take place on the 10th instant in the electoral dis-

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tricts divided into sections, and on the 11th the general count of the municipal district.

ART. 7. From the 12th to the 15th there shall be exhibited to the public the names of the persons elected and the objections which may be proper shall be received; and on the 16th the municipal council shall assemble in extraordinary session with the commissioners of the general board of examination of votes, and they shall decide on the objections presented.

ART. 8. Up to the 25th the council of administration shall pass upon the appeals which may be presented against the resolutions of the extraordinary boards and they shall be returned to the municipal councils, which shall take possession of their offices on the 1st day of January, 1879.

ART. 9. If, for any reason whatsoever, the council should not have decided the appeals by that day or said resolutions should not have been received by the municipal councils, the persons elected and proclaimed by the latter and by the general board of examination of votes in the extraordinary session of December 16 shall take possession in towns where there exists a municipality at the present time, as well as in those newly created, without prejudice to what may be proper in view of the resolution of the council of administration.

ART. 10. The new municipal councils, when they assemble on the 1st of January proximo, shall recommend to my authority in ternary the mayor and the deputy mayor as prescribed by the law in its articles 49 and 50, in the meantime the councilor who may have obtained the highest number of votes presiding temporarily over the municipal council, and if two or more councilors received an equal number of votes, the senior in age shall preside until I designate a person to fill the first one of said offices.

ART. 11. The civil governors of the provinces, to whom I recommend the greatest zeal in all that refers to the observance of this decree, shall take care as soon as the general examination of votes has taken place in each one of the municipalities of the province in their charge, and as soon as the objections against the same have been presented, to forward to this Government a list of the names of the councilors elected, stating the protests or objections instituted before the council of administration in the absence of provincial deputations.

ART. 12. The elections for provincial deputies shall take place from the 15th of January on. A special decree shall establish clear provisions to carry them out.

ART. 13. The office of the secretary of this General Government shall issue the instructions necessary for the better enforcement of this decree, and it shall speedily decide the doubts which the civil governors of the provinces may entertain.

Havana, August 9, 1878.

ARSENIO MARTINEZ DE CAMPOS.

LOANS.

Royal order of June 30, 1880, resolving that municipal councils may contract loans, cases in which they must do so, and rules issued therefor.

The colonial secretary communicates to His Excellency the Governor-General of this island, under date of June 3 last, the following royal order:

YOUR EXCELLENCY: I have informed His Majesty the King (whom God preserve) of the letter from Your Excellency of March 14 last,

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requesting information as to whether municipal councils may contract loans and the manner of doing so. All that is stated to Your Excellency by several municipal councils and by the council of administration of that island has been noted. And, taking into consideration (1) that the municipal law of 1846 empowered municipal councils to contract loans with the intervention of the Government by reason of the supervision it exercised over popular corporations with regard to the local rights and interests; (2) that the silence observed on the subject by the latest legislation of 1867 and 1870, applied to Cuba and Porto Rico, should be interpreted as inspired by the opinion that the local corporations, to which is intrusted the government and administration of its rights and interests, are in a status of local independence, and giving to the greater number of their resolutions a final character, unless general interests are involved or interests of third persons, thus requiring the interference of the Government or of its representatives in the provinces; (3) that from this special character of the new laws there is deduced that municipal councils may take refuge in the contraction of loans as a means of satisfying their obligations; (4) that the section of government of the council of state has fixed in this respect, as jurisprudence, that when a loan does not affect the real estate of the municipality, or the property rights or bonds of the debt referred to in article 80 of the law of the Peninsula, there is no reason for the Government to grant or refuse authority to contract the loan, because it is an ordinary resolution over which the Government has no jurisdiction; but this is not the case when the contract may involve the property or the rights mentioned in the said article on account of the necessity of selling the mortgages created, or for any other reason whatsoever, it then being the duty of the Government to grant the authority, the approval of the same being necessary for resolutions affecting said properties; (5) that in accordance with article 134 of the municipal law the constitution of taxes by the municipal councils must always be approved by Your Excellency after certain proceedings, as the only competent authority to authorize loans, no matter what their character may be; without the circumstance of the law not foreseeing the same, being an obstacle to their authorization by Your Excellency, and which must be communicated to this department for the purposes of the high inspection which appertains to the same in all branches of the public service; (6) that the law in conferring upon the authority of Your Excellency the approval of loans, it also empowers you to fix the conditions under which they are to be contracted for the payment of debts as well as for the raising of funds for other municipal requirements; (7) and, finally, that while special rules applicable to the matter are approved, Your Excellency is informed, in a royal order of this date, that it is advisable to adopt the rules which you recommend in your letter of March 14, namely, (1) that the loans be resolved upon by a majority of the municipal board; (2) that the provincial deputation, the council of administration, and the government of that island report on the proceedings, and (3) that the resolution be of the exclusive competency of Your Excellency, making a report to this department. His Majesty the King (whom God preserve) has deemed proper to order that Your Excellency be informed in accordance with the opinion of the council of state in full, (1) that the municipal law in force does not oppose municipal councils contracting the loans they may consider necessary in order to attend to the requirements of the municipality, and (2) that the competent authority to approve and authorize loans is Your Excellency, and that the institution and resolution of the proper proceedings must be subjected for

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the present to the same rules you recommend in your official letter of March 14 last, your decision being communicated to this department.

And His Excellency having ordered the enforcement of the foregoing royal order, it is published in the official gazette, supplemented with the rules which are to be observed for the fulfillment of the same.

Havana, July 2, 1880.

JOAQUIN CARBONELL,
Secretary of the General Government.

RULES CITED.

1. The loan is to be resolved upon by a majority of the municipal board.

2. The provincial deputation, the government of the province, and the council of administration must report on the proceedings.

3. The resolution of the matter shall be of the exclusive competency of the Governor-General.

With regard to the conditions to which loans are to be subject, two classes may be stated:

1. Loans destined to the payment of debts.

2. Loans destined to the raising of funds in order to attend to the various requirements and especially for the construction of works of public utility.

The loans of the first class may consist in the emission of obligations to a sufficient amount, each one reduced in order that they may be applied to the payment of all the debts to be satisfied, and the interest which the obligations are to bear can not exceed the average of the legal interest on money during a number of years equal to that for which the amortization of the loan is to be continued.

The loans, the object of which is to raise funds for the construction of works or to liquidate debts which can not be satisfied with obligations, must be contracted by means of a public auction, in which the amount of interest of the issue shall be the subject of the bids, whether they are to be issued at par or on the rate of the issue, if the interest is previously fixed, with subjection to the document of conditions relating to the provisions in force on the subject.

The municipal board, in instituting the proceedings requesting authority to negotiate loans, must state concretely each and every one of the purposes to which the funds obtained by virtue of the loan are to be destined and the amount of the same, as well as the manner and the period in which the amortization is to take place and the annual sums required thereby and for the payment of interest, and if the latter may be obtained from the revenues of the ordinary budget or whether extraordinary taxes are to be established or an increase in the assessment.

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PROVISIONAL PROVINCIAL LAW OF THE ISLAND OF CUBA.

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PROVISIONAL PROVINCIAL LAW OF THE ISLAND OF CUBA.

TITLE I.

PROVINCES, THEIR TERRITORY AND INHABITANTS.

ARTICLE 1. The territory of the island of Cuba and the adjacent ones is divided for their administration and government into provinces, as determined by the law of territorial division.

ART. 2. A province is composed of all the municipal districts included within its limits.

ART. 3. No change of any kind whatsoever shall be made in the limits of a province except with a hearing and with the consent of the municipal councils and deputations interested and of the council of state.

Should any of these corporations and the supreme Government fail to agree, the change shall be the subject of a law.

ART. 4. The provisions contained in Title I of the municipal law are applicable to the inhabitants of provinces in what relates to their status and rights.

TITLE II.

CIVIL ADMINISTRATION OF PROVINCES.

CHAPTER I.—*Provincial authorities.*

ART. 5. The following are the administrative authorities of provinces:

1. The governor.
2. The provincial deputation.
3. The provincial committee, with the character and duties determined by article 63.

ART. 6. The governor of a province is appointed and removed by the supreme government, as well as all the employees who, under the orders of the former, are to discharge the duties which are not reserved to the deputation and to the provincial committee.

ART. 7. The provincial deputation shall be composed of the deputies elected by the electors of the municipalities in accordance with article 40 of the municipal law.

Each judicial district shall elect three provincial deputies.

If those who are to be appointed according to this rule do not reach the number of twelve, the number of eligibles shall be completed in order to reach this number in the judicial districts which have the greatest population. If those which the province is to elect exceed twenty, the number of the eligibles shall be reduced in the districts which have the lowest population.

The General Government shall at the proper time publish the number of provincial deputies which each judicial district is to elect in accordance with this provision.

ART. 8. The provincial committee shall be composed of five members appointed in accordance with this law.

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CHAPTER II.—*Duties of the governor.*

ART. 9. It behooves the governor of a province as the superior chief of the administration to—

1. Preside over the provincial deputation and the committee whenever he is present at their sessions, with a right to vote.

2. Authenticate the minutes of the same.

3. Communicate and execute the decisions of the deputation and of the committee and see to their exact and punctual fulfillment.

4. Act in the name and represent the province in all its judicial matters, reports, correspondence, and all kinds of communications.

5. Inspect the offices of the province and municipal councils, verifying the condition of their treasuries, archives, and accounts, and see that the laws and general provisions as well as the decisions of the deputation are complied with; also see to their execution and prepare all matters it may have to consider. In virtue thereof he shall issue the proper orders, and in cases of omission he shall decide what he may deem best, as well as in cases of negligence or opposition from those charged with their execution, informing the Governor-General of the island of all these matters.

6. Suspend the decisions of the provincial deputation and of the municipal councils when it is proper according to this law and to the municipal law, and exercise the powers which the same and the other laws in force grant him.

7. Suspend from their offices the provincial deputies, mayors, deputy mayors, and aldermen in the cases and manner prescribed by this law and by the municipal law.

8. Supplement the provincial and municipal action either by appointing the deputation and municipal councils whenever they do not meet, or completing their number whenever they do not meet in a sufficient number to adopt resolutions, or supplementing the duties of the same corporations should they refuse to execute them, and in any case submitting a report to the Governor-General of the island.

ART. 10. The governor may direct to the deputation the statements he may consider proper on which he is obliged to pass.

ART. 11. The governor shall very specially see that public order is preserved within the territory of the province, for which purpose the military authorities shall give him their assistance whenever he requests it.

ART. 12. The governor in his acts as the representative and delegate of the government shall act in accordance with the laws and the regulations and provisions which the latter may issue by virtue of its powers.

ART. 13. The Governor-General shall designate the person who is to substitute the governor of the province in his absence or sickness. If the absence is from the capital but not from the province, the governor shall continue discharging his office from the point at which he may be, without prejudice to which the administrative chiefs and the secretary shall dispatch the mere routine matter, communicating directly with the Governor-General in urgent cases.

ART. 14. The office of governor is incompatible with every other provincial or municipal office of any kind whatsoever, without prejudice to the provisions of the preceding article.

CHAPTER III.—*Organization and mode of procedure of the provincial deputation.*

ART. 15. The division of the provinces into electoral districts shall be made by the supreme Government, hearing the respective deputations.

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ART. 16. Each province shall be divided into the number of electoral districts equal to the number of provincial deputies said province is to elect in accordance with the provisions of article 7. Each district shall appoint one deputy only.

ART. 17. No municipality shall constitute a portion of different electoral districts.

ART. 18. For the division of the province into districts and the designation of the towns to be the seat of each one, the deputation shall draft a project which shall be published in the respective province and in the Gazette of Havana one month before the proposal is forwarded to the Governor-General. During this period the governor of the province shall receive the claims and remarks which, by reason of the division, may be made by the municipal councils and by the residents, said claims and remarks being forwarded by the said governor with his report and the project of the deputation to the Governor-General of the province within the eight days following the expiration of the period.

The Governor-General shall forward the project with his report to the colonial department by the first mail.

The colonial department, first hearing the council of state, shall fix the division of the districts with the designation of their respective seats, within the shortest period possible.

After the division and the designation have been made, they can not be altered except by virtue of justified proceedings, which shall be passed upon by the colonial department, hearing the council of state.

ART. 19. All persons having the necessary requisites to be deputies to the Cortes and who reside within the province may be provincial deputies.

The following can not be provincial deputies in any case whatsoever:

1. Deputies to the Cortes.
2. Mayors, deputy mayors, and aldermen.
3. Employees of the State, province, or any of its municipalities holding office.
4. Persons directly or indirectly interested in services, contracts, or the furnishing of supplies within the province and for account of the same, of the State, or of the municipalities.
5. Persons holding public offices which by special laws are declared incompatible with that of provincial deputy.
6. Persons engaged in administrative or judicial litigation with the deputation or with the establishments subject to and under the administration of the same.[1]

The office of professor in a university or in an institute in the seat of the province shall be compatible with that of provincial deputy.

The same persons to whom this right is granted may excuse themselves from holding the offices of councilors, according to article 45 of the municipal law.

ART. 20. The election of provincial deputies shall take place during the first fifteen days of the month of September.

ART. 21. The electoral districts and sections shall be the same as those which serve for the municipal elections.

ART. 22. The deputies-elect shall present their certificates of election in the office of the secretary of the deputation eight days before that on which the sessions are to begin. On this day, without necessity

[1] According to a royal order of September 7, 1871, the offices of clerk of a chamber and of recording clerk are incompatible with the office of provincial deputy.

According to a royal order of July 12, 1871, the offices of provincial deputy and register of property are incompatible.

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of previous call, the deputies who may have presented their certificates shall meet under the chairmanship of the governor and shall proceed to the temporary organization of the deputation.

ART. 23. The provincial deputation shall be temporarily organized under the chairmanship of the oldest member, and the two youngest amongst those present shall act as secretaries.

ART. 24. After the deputation has been temporarily organized, and during the same session, it shall elect two committees, each composed of three members; the first committee shall examine the certificates already presented and those that may be subsequently presented by the interested parties; the second committee shall examine the certificates of the members composing the former.

Both committees shall immediately present their reports to the provincial deputation, which, in view thereof, shall proceed instantly to definitely pass upon all the claims and protests arising from the electoral proceedings.

ART. 25. After the certificates against which there is no protest affecting the legality of the election are approved, and in order to definitely organize itself, the deputation shall proceed to draw up a ternary of members from its body, which shall be forwarded to the Governor-General in order that the latter may appoint the president of the corporation from among the same.

Immediately thereafter the corporation shall elect from among its members a vice-president and two secretaries, to act as such at all the sessions to be held until its renewal.

The Governor-General is not required to accept the persons recommended, and in such case he may appoint another member of the deputation to the presidency.

The deputies who may not have presented their certificates for the final organization shall be considered as having renounced the office. The deputation shall declare the vacancy and shall communicate the same to the governor, a partial election being then held in the manner and at the time prescribed by the law.

ART. 26. Should the deputation order the annulment of a certificate, it shall communicate its decision to the governor, who shall order its immediate publication.

This decision shall be final, and in consequence thereof the partial election shall be held, if the interested party does not appeal from it within eight days to the audiencia of the territory.

ART. 27. The provincial deputation shall meet only in the capital of the province every year on the first working day of the months of April and November.

ART. 28. The first session of each term shall be inaugurated by the governor in the name of the Supreme Government.

(1) By a royal order of April 23, 1871, the following was decided:

INTERIOR DEPARTMENT.

His Majesty the King has deemed proper to resolve (1) that when the governor, the president, and the vice-president of the corporation do not take part at the sessions of the provincial deputation after the inaugural session treated of in article 32 of the law, and there is present at the same the number of members prescribed by article 42 of the former, the vice-president of the permanent committee shall preside; and (2) that should the vice-president of the provincial committee not be present at the session of the same, nor the governor, and there is present the number of members prescribed by article 62 of the law, the member of the same who obtained the highest number of votes at his election thereto shall preside, and in case there are two or more who receive an equal number, the senior in age shall preside.

Which, by royal order, etc.

Madrid, April 23, 1870. SAGASTA.

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ART. 29. The office of deputy is gratuitous, honorary, and subject to liability, and can not be renounced after having been accepted except for just cause.

The duration thereof shall be four years, a renewal of half the deputies which constitute the deputation being made every two years.

The first designation shall take place by lot. First the greater number shall cease, if the total should not be capable of an exact division, and in the subsequent renewals the oldest in service shall cease.

ART. 30. The extraordinary vacancies occurring for any reason whatsoever shall be filled by partial election, whenever an ordinary session of the deputation is to be held before the general renewal, the person elected taking the place of the deputy who retires.

When a vacancy occurs by reason of administrative or judicial suspension, or after the period above mentioned, the Governor-General shall temporarily fill it with any person who may have already held the office of provisional deputy by election, should there be any. The person appointed shall continue to hold the office until the suspension of the deputy whose place he is filling is finally decided upon, or until the first renewal, if at that time the former should retire on account of the series established.

ART. 31. The provincial deputation shall have the power to accept or refuse resignations and to declare vacancies in accordance with the provisions of this law.

The governor shall order ordinary and extraordinary elections whenever they are to be held according to law and in the manner prescribed by the same. The elections shall be announced within the five days following that on which they were decided upon, and shall take place within a period not less than fifteen nor more than thirty days after the call.

ART. 32. The deputation shall determine at its first session of each semiannual term the number of sessions it shall hold during the same. Should it be necessary, it may order an adjournment with the consent of the governor.

Should any causes arise during sessions which should render their continuance dangerous, the governor may suspend or adjourn them, immediately notifying the Governor-General of his action.

ART. 33. The deputation shall hold extraordinary sessions whenever it should be necessary, in the opinion of the Governor-General or in that of the governor of the province, for the consideration of any special question.

ART. 34. The governor shall make a call, notifying in writing and at his domicile each one of the members eight days in advance and stating the object if an extraordinary session is in question. The session shall be announced the same time in advance in the official newspapers and in the usual manner.

ART. 35. When the governor considers on account of special reasons that public order may be endangered if an extraordinary session takes place, he shall suspend the call, making a report to the Governor-General.

Within the fifteen days following the communication the Governor-General shall decide what may be proper, approving the resolution of the governor or raising the suspension. The latter is considered raised if, a month having elapsed from the date of the resolution of the call, no superior resolution whatsoever to the contrary has been made public.

ART. 36. The sessions must be public when accounts, budgets, or other questions related thereto are in question, and also when certificates of provincial elections are to be discussed.

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An extract of the sessions shall be published in the bulletin or in the official newspaper.

ART. 37. Attendance at sessions is obligatory. Any deputy who, without a legitimate and justifiable reason, does not comply with the provisions of this article shall incur a fine of 20 pesos for each offense, being, moreover, liable for any damages arising from his tardiness.

Any deputy who shall find it necessary to absent himself shall notify the governor; otherwise he shall incur the liabilities mentioned in the preceding paragraph.

During the sessions permission from the deputation is required to obtain leave of absence, which shall only be granted in so far as its effects do not conflict with the provisions of the following article.

ART. 38. In order to deliberate on any subject the presence of an absolute majority of the total number of deputies is necessary.

ART. 39. In order to adopt a resolution the vote of the majority of the members present is necessary, except as provided for in a contrary case by this law. In case of a tie, voting shall be resumed the following day, and should there be a second tie the president shall cast the deciding vote.

ART. 40. The provisions of articles 57, 58, 95, 99, 101, 103, 104, and 107 of the municipal law are applicable to the provincial deputations in so far as possible.

ART. 41. For the dispatch of business, order of sessions, and mode of procedure the deputation shall draft the regulations to be observed, which shall be submitted to the Governor-General for approval.

ART. 42. At each one of the semiannual meetings the president and secretaries of the deputation shall submit a statement mentioning the business it has to consider, with a notice of all pending matters, state of the accounts, funds, and provincial administration.

CHAPTER IV.—*Jurisdiction and powers of the provincial deputation.*

ART. 43. The administration and direction of the special interests of the province are under the jurisdiction of the provincial deputation, in so far as they do not appertain to the municipal councils, according to this law and the municipal law, and particularly in all that refers to the following subjects:

1. The establishment and preservation of the services devoted to the comfort of the inhabitants of the province and the development of their material and moral interests, such as roads, navigation and irrigation canals, and all kinds of public works of provincial interest, charitable establishments, and institutions of instruction, fairs, expositions, and other institutions for improvement and other similar objects, subject to the special laws and regulations of the different branches of the public administration.

The powers appertaining to deputations, in so far as charity is concerned, are and shall always be understood without prejudice to the high inspection which, in this as well as in all branches of the administration, is conferred upon the Governor-General by legislation in force.

2. The administration of provincial funds, either for the use, enjoyment, and preservation of all kinds of property, acts, and rights belonging to the province or to the establishments depending on the same, or for the settlement, distribution, investment, and account of the necessary revenues to carry into execution the services intrusted to the deputation.

The deputation shall conform to the prescriptions of the laws and provisions issued for their execution in all matters which, according to

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the present law, are not of its exclusive jurisdiction and wherein it acts by delegation.

ART. 44. The provisions of article 74 of the municipal law are applicable to provincial deputations as well as those of article 70 of the same law, in so far as applicable to the nature of the services intrusted to said corporation.

Institutions of instruction constituted and supported by the provincial deputation shall conform to the provisions in force on public instruction.

ART. 45. The deputation shall furthermore have all the powers conferred upon the same by the municipal law.

ART. 46. The resolutions adopted by provincial deputations, in conformity with the provisions of article 43, are final, without prejudice to the appeals established by this law.

ART. 47. The resolutions of provincial deputations shall be communicated within the period of three days to the governor, who may in all cases suspend them at his own instance, and at the instance of any resident of the province in the following cases:

1. On account of deciding questions which, according to this law and other special ones, are not of the competency of the deputation.

2. On account of delinquency.

The suspension shall be communicated to the provincial deputation within the eight days following the notification of the resolution, after which period it is final by its own right. The period shall begin from the time of the receipt of the proceedings if the governor called for them for examination.

The suspension, in any case, shall state the reasons therefor, and a definite and precise statement shall be made of the legal provisions on which it is based.

ART. 48. After the suspension has been communicated, the deputation may appeal to the Governor-General, to whom the governor of the province shall forward the appeal with the proceedings and his report within a period of eight days. The Governor-General shall decide, after consultation with the council of administration, within forty days after the transmission of the proceedings.

ART. 49. The governor shall also suspend the execution of the resolutions referred to in the first paragraph of article 47 whenever injury may result therefrom to the civil rights of a third person.

In this case the suspension shall only take place when the interested party so requests it, presenting at the same time a complaint against the resolution.

The governor shall order the suspension, if it should be in order, within the three days following that on which the petition was presented, and shall on the next day notify the interested party.[1]

ART. 50. Any person considering himself prejudiced in his civil rights by the resolutions of the deputation, whether their execution has been suspended or not by virtue of the foregoing provisions, may object to the same through a complaint to the judge or court of compe-

[1] According to a royal order of July 27, 1882, the resolutions must be communicated within the period prescribed to the governor, even though the latter presided over the session, in order that the office of the secretary of the civil government may communicate the same to the persons interested.

The suspension of the resolutions of the deputation can only be ordered by the governors in the cases specifically mentioned in this law, and as may have been confirmed also by royal order of April 15, 1874, when it was ordered that the governors only are the executors of the resolutions of deputations.

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tent jurisdiction, according to what may be prescribed by the laws, in view of the character of the question.

The judge or court taking cognizance of the matter may suspend, by means of a first ruling and on the request of the party interested, the execution of the resolution appealed from, should this not have taken place in conformity with article 48, whenever he considers it proper and convenient in order to avoid serious and irretrievable injury.

A period of thirty days is granted for the presentation of this complaint, beginning from the date of the notice of the resolution, or from the date in which the suspension was communicated in a proper case; should this period of time elapse without the complaint having been presented, the suspension shall cease by right and the resolution accepted.

ART. 51. When a resolution is suspended or appealed from by virtue of the provisions of the preceding articles, the governor shall forward the data to the Governor-General in the first case, or to the judge or court of competent jurisdiction in the second case, within the period of eight days.

ART. 52. The resolution suspended by the governor and not appealed from to the courts shall be communicated within a period of eight days to the Governor-General, who shall decide in the manner prescribed by article 173 of the municipal law.

An administrative litigative appeal lies from the resolution of the Governor-General.

ART. 53. The respective municipal councils may appeal within the period of eight days, counting from that of the publication or notice of the assessment, against all kinds of assessments, approved in accordance with the provisions of the municipal law, which the deputation may order amongst the towns of the province in order to cover the general and necessary expenses for the provincial requirements.

After this period has elapsed it shall be final without further remedy.

The Governor-General shall decide on the appeal after hearing the council of administration, and his confirmatory ruling may give occasion to an appeal to the court of the island hearing administrative litigation.

CHAPTER V.—*Organization and mode of procedure of the provincial committee.*

ART. 54. The Governor-General shall appoint from among the members of the deputation the members of the provincial committee and its vice-president.

It also behooves the Governor-General to remove and suspend the same, which must be for good reasons.

ART. 55. The committee is composed of five deputies, among whom there shall not be more than one from the same judicial district. The duration of the offices shall be four years. The extraordinary vacancies shall be filled in the same manner, and the appointees shall occupy with regard to the series of cessation (salida) the place of the members they substitute.

The Governor-General shall pass on the excuses offered by the appointees.

ART. 56. The provincial committee shall have the powers granted to the same by this law. It is always in session and resides in the capital of the province.

Each one of the members shall enjoy the remuneration which the

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deputation may decide upon and which shall not exceed 2,000, 1,600, or 1,200 pesos in the provinces of the first, second, or third classes, respectively.

ART. 57. The provincial committee shall meet as often as required by the business intrusted to it, in accordance with the order fixed in the first session of each month.

ART. 58. The governor is the president of the committee, and the secretary of the deputation shall be the secretary without a vote.

ART. 59. In order to deliberate on any subject the presence of three members is necessary, and this number of favorable votes is necessary for the adoption of a resolution.

When this number of favorable votes is not obtained at a ballot, voting shall be resumed the following day, and the decision of the majority shall cause the resolution to be adopted; should there still be a tie, the vote of the president shall be the deciding one.

ART. 60. After the office has been accepted, attendance at the sessions is obligatory.

When a member does not attend four consecutive sessions, without permission from the committee or just cause accepted by the same, it shall be understood that he renounces his office, without prejudice to the liability he may have incurred according to article 37.

ART. 61. The sessions of the committee shall be public in the shape and manner prescribed in the municipal law for sessions of municipal councils.

ART. 62. The provisions cited in article 40 are applicable to these sessions in so far as they are compatible with the organization and mode of procedure of this body.

CHAPTER VI.—*Jurisdiction and powers of the provincial committee.*

ART. 63. The provincial committee shall have the following powers:

1. As a consulting body, to give its opinion whenever the rules and regulations prescribe it and whenever the governor, of his own accord, or by command of the Governor-General, deems convenient to request it.

2. To pass upon the claims and protests in the election of councilors, and the disqualifications and excuses of the latter, in the cases and in the manner established by the electoral and municipal laws.

3. To temporarily take charge of the business intrusted to the provincial deputation, when by reason of the urgency or the nature of the matter the meeting of the same can not be awaited; in such cases the provincial deputies who are at the capital at the time must attend the sessions.[1]

The deputation, at its first meeting, shall decide whatever it may deem convenient in order to reach a final resolution.

ART. 64. The competencies of jurisdiction and powers between the administrative and judicial authorities shall be decided in accordance with the regulations of July 4, 1861.

ART. 65. The governor shall direct the litigation instituted in the name of the province.

In order to institute ordinary suits of greater amount the resolution of the provincial deputation is necessary; in all other cases that of the governor is sufficient, after hearing the committee.

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[1] By a royal order of June 13, 1877, it was ordered that these sessions be presided over by the president of the deputation, and in his absence by the vice-president of the permanent committee, unless the civil governor of the province is present.

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CHAPTER VII.—*Employees and agents of the provincial administration.*

ART. 66. The following are the divisions of the provincial deputation:
1. Office of the secretary.
2. Office of the auditor.
3. Office of the treasurer.

There shall be a chief at the head of each of these divisions, under whose orders all the necessary employees shall serve.

It behooves the governor, on the recommendation of the deputation of the province, to appoint and remove these chiefs.

ART. 67. The provincial deputation appoints and removes its other employees.

ART. 68. The personnel, the salary, and the duties of all the employees of said divisions, and the regulations for the interior management, shall be prescribed by the deputation, submitting the same to the Governor-General for his approval.

ART. 69. The recommendation or appointment of the said officials shall be made after competition from among the persons who possess the qualifications determined by special regulations.

ART. 70. The Governor-General may also remove or suspend secretaries, auditors, and treasurers, without the recommendation of the deputation, for serious reasons duly justified in proceedings.

The suspension can not exceed four months.

ART. 71. The interested parties may enter complaints against the ruling of removal or suspension before the colonial secretary through the Governor-General, who by the first mail shall forward the appeal with the record of the proceedings and his report thereon.

The colonial secretary shall decide, without loss of time and without further appeal, after hearing the council of state.

ART. 72. The provincial deputation may, after securing the approval of the Governor-General, appoint any one of its members or employees to inspect the municipal councils in order to ascertain the condition of their services and archives.

During these visits no rulings shall be issued concerning municipal matters, and the delegates shall confine themselves to informing the deputation, which in view thereof shall adopt the proper resolutions in conformity with this law.

ART. 73. The secretary is intrusted with the preparation and dispatch of the matters of which the committee and the deputation have to take cognizance, with the drafting of their minutes and resolutions, the correspondence, and the care and preservation of their archives.

He shall sign, with the president, the reports and resolutions of the committee and of the deputation, and shall authorize them with the seal of the province, the care of which is intrusted to him, and shall also see that the proper parties are duly notified.

ART. 74. The treasurer is the only person intrusted with the custody of the provincial funds, and as such he shall give the sureties which the deputation may require.

CHAPTER VIII.—*Budgets and provincial accounts.*

ART. 75. The provincial deputation shall follow, in the accounting of its funds, the provisions of the decree of September 12 and the instructions of October 4, 1870, issued for the management of the financial administration and accounting system of the colonies and the others in force relating to special services.

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ART. 76. The provincial deputation shall draw up, discuss, and approve its ordinary and additional budgets within the second month of the fiscal year, and shall forward the same to the governor for the twofold purpose of correcting legal extralimitations, should there be any, and to prevent the general interests of towns from being injured.

ART. 77. The deputation may appeal from the decisions of the governor, taking such appeal to the said governor, in order that it may be forwarded to the Governor-General of the island, who shall decide thereon without loss of time, hearing the council of administration.

If no decision has been rendered by the Governor-General fifteen days before the beginning of the fiscal year, the budgets approved by the deputation, with the amendments made therein by the governor of the province, shall be in force.

ART. 78. The general disbursing office appertains to the president of the deputation or to whomsoever represents him whilst the deputation is in session; when it is not in session it shall appertain to the vice-president of the provincial committee.

ART. 79. The monthly distribution of funds shall appertain to the deputation, or if it should not be in session to the committee in union with the deputies who may be in the capital.

ART. 80. The provincial budget shall precisely include the necessary amounts, in accordance with the revenues of the province, to cover the following services:

1. Personnel and supplies of its offices and dependencies, and provincial charitable institutions, as well as sanitary establishments and those of instruction.
2. Preservation and management of the estates and buildings of the province.
3. Construction, preservation, and management of its public works.
4. Inspection of municipal timber lands.
5. Encouragement and preservation of trees.
6. Subscription to the *Gaceta de Madrid* and that of Havana.
7. Fund for emergencies and public calamities.
8. Advertisements, printing, and other expenses which may be considered necessary or convenient.
9. All the other expenses which may be clearly and precisely required by this and by other laws in the part to be complied with by the province.

ART. 81. The vote of an absolute majority of the total number of deputies is necessary for the approval of the budget. If the budget should not be approved at the beginning of the fiscal year, the previous budget shall remain in force in its necessary parts, or in a proper case the provisions of article 77 shall be observed.

ART. 82. In order to cover the expenditures specified in the provincial budget, the deputation shall make use of the revenues which may be proper, not only those derived from rents and profits on all kinds of property, rights, or capitals which for any reason whatsoever belong to the province or to the establishments depending thereon, but also those derived from public works, institutions, or services paid for from its funds.

If these receipts should not be sufficient the deputation shall levy an assessment to cover the balance among the towns of the province, in proportion to the amount of direct taxes paid by each one of the same.

ART. 83. This quota shall be included in the budget of each town, and the entire amount thereof shall be paid into the treasurer's office

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at the time of the ordinary collection or before, should the municipal councils voluntarily make the payment thereof.

ART. 84. The provisions of articles 153, 154, 157, 158, and 165 of the municipal law are applicable to the deputation in all that appertains to the collection, management, and custody of the provincial funds.

ART. 85. After the accounts for each term have been drawn up and approved, the deputation shall forward the same to the Governor-General in order that he may transmit them to the court of accounts of the Kingdom.

TITLE III.

DEPENDENCY AND LIABILITY OF DEPUTIES AND AGENTS OF THE PROVINCIAL ADMINISTRATION.

ART. 86. The provincial deputation and the committee are subject to the inspection and dependency of the supreme government and of the Governor General, and are therefore subject to the proper administrative liability in all matters that are not of their competency, in accordance with this law and with other general or special laws in force.

The governor is intrusted with the transmission to the deputation and to the committee of the laws, provisions, and instructions which the Governor-General may communicate to him, in so far as they concern them.

ART. 87. The provincial deputation shall be liable:

1. By reason of manifest infraction of the law in its actions or resolutions, whether it be on account of its having transcended its powers or abused those appertaining to it.
2. By reason of disobedience to the Supreme Government or to the Governor-General in the matters in which it acts by delegation and under orders from them.
3. By disrespect to the authority.
4. By reason of negligence or carelessness, causing injury to the interests or services intrusted to it.

ART. 88. The liability shall be demanded administratively or judicially, in a proper case, according to the nature of the act or omission.

The liability shall only be demanded from the deputies who incurred the omission or took a direct part in the act or resolution which caused it.

ART. 89. The administrative liability includes warning, fine, and suspension.

The provisions of article 179 of the municipal law are applicable to these penalties.

ART. 90. The following rules shall be observed for the imposition or exaction of fines:

1. It behooves the Governor-General, first hearing the council of administration of the island, to declare the penalty.
2. The fines shall not exceed 200 pesos.
3. The fines shall be paid by the deputies liable.
4. The provisions of articles 181, 182, and 183 of the municipal law are applicable to these fines.

ART. 91. Suspension is in order in the cases mentioned in article 186 of the municipal law. The provisions of articles 187, 188, and 190 of the municipal law are applicable to proceedings of suspension of provincial deputies.

Should criminal liability exist the provisions of article 189 of the said law shall be observed.

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ART. 92. The deputation in full may be suspended from its duties by the Governor-General if necessary to maintain public order, as well as in the cases provided for in article 9 of this law, immediately informing the colonial department of his action and forwarding the proper proceedings.

In view thereof, after hearing the council of state and in accordance with the council of secretaries, the deputation may be declared dissolved, and any other orders which may be proper shall be issued. If any liability should appear against the same or against one or more of its members, they shall be placed at the disposal of the courts of competent jurisdiction.

Art. 93. Any deputy who has been removed from office can not be reelected until six years at least have elapsed, unless the sentence does not impose a penalty of disqualification for a longer period.

ART. 94. The audiencia of the territory shall be the competent court in first instance, with the appeals to the supreme court authorized by the laws, in the offenses committed by the deputation in a body and by the provincial deputies in the exercise of their functions.

ART. 95. The employees and agents of the provincial administration appointed by the deputation shall render obedience to the same and are liable to it in accordance with this law.

ADDITIONAL PROVISIONS.

1. All prior laws and provisions, in so far as they conflict with the present ones, are hereby repealed.

2. The supreme government shall issue, in accordance with this law, the regulations necessary for its execution.

TRANSITORY PROVISIONS.

1. The first division of the provinces of the island of Cuba into electoral districts shall be made by the supreme government, hearing the Governor-General, without prejudice to amending the same after the deputations have been elected, in accordance with the prescriptions of this law.

2. After the division of the provinces into electoral districts has been published in the Gazette of Havana the Governor-General shall announce the elections and shall order what may be proper, so that the preliminary work of the same may be proceeded with.

3. Until the electoral law is published, to which reference is made in article 5, the persons designated in the second transitory provision of the municipal law shall be electors.

A true copy.

R. GALBIS,
Secretary of the General Government.

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TRANSLATION

OF

THE NOTARIAL LAWS

IN FORCE IN

CUBA AND PUERTO RICO.

(1888.)

DIVISION OF CUSTOMS AND INSULAR AFFAIRS,
WAR DEPARTMENT,
July, 1899.

WASHINGTON:
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NOTARIAL LAWS IN FORCE IN CUBA AND PUERTO RICO.

DECREE.

The Government of the Republic, in conformity with the suggestion of the colonial secretary, decrees the following:

FIRST AND LAST ARTICLE. Notaries of the islands of Cuba and Puerto Rico shall be governed by the organic law and by the annexed regulations.

Madrid, October 29, 1873.

The President of the Government of the Republic,

EMILIO CASTELAR.

The Colonial Secretary,

SANTIAGO SOLER.

NOTARIAL LAW.

TITLE I.

NOTARIES.

ARTICLE 1. A notary is the public official authorized to certify contracts and other extrajudicial instruments in accordance to law.

There shall be only one class of these officials.

ART. 2. A notary who, on being requested to certify to any public or private extrajudicial instrument, should refuse his services without just cause, shall incur the liability which may be proper in accordance to the law.

ART. 3. Each judicial subdistrict constitutes a notarial district, within which there shall be created the number of notarial offices considered necessary for the public service, taking into consideration the population, the frequency and facility of transactions, the circumstances of the locality, and the befitting maintenance of the notaries.

ART. 4. At the time of the creation of the notarial offices the Government shall fix the residence of each one of the notaries, hearing the audiencia, the governors of the islands, and the board of directors of the notarial association, respectively, and can not subsequently make any changes in the limits without hearing said bodies and the treasury and colonial section of the council of state.

ART. 5. Every notary shall make his own protocol.

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ART. 6. In the case of the death, sickness, absence, disqualification, or any other disability of a notary, the person who at the time of the creation of the notarial offices was designated for this purpose, shall take charge of the protocol and substitute him.

When this is not possible for any reason whatsoever, the judge of first instance shall appoint a temporary substitute from among the notaries of the same town or of the nearest ones until the decision of the presiding judge of the audiencia.

The substitute shall cease to discharge his duties as soon as the new appointee takes possession or the disability of the notary whom he substitutes ceases to exist.

ART. 7. The residence of the notaries must be the place designated at the time of the creation of the respective notarial office.

ART. 8. Notaries may practice within the notarial district in which their office is situated, in the manner which will be stated in the regulations.

ART. 9. Towns where there is more than one court of first instance shall be considered as only one judicial subdistrict.

TITLE II.

REQUISITES TO OBTAIN A NOTARIAL OFFICE AND TO ISSUE CERTIFICATIONS.

ART. 10. To be a notary it is necessary—

To be a Spaniard and of age.

To have good habits, and have pursued the studies and have complied with the other requisites prescribed by the laws and regulations, or to be a lawyer.

ART. 11. The notaries of the islands of Cuba and Puerto Rico shall be appointed by the president of the executive power of the Republic, at the suggestion of the colonial department.

ART. 12. Notarial offices shall be filled by competitive examinations, or competition for promotion, in the manner which will be prescribed by the regulations.

ART. 13. All other means to obtain a license are hereby abolished.

Notaries shall pay, in order to practice, the tax to which the other similar professions are subject.

ART. 14. Notaries, before taking possession of their office, shall give a guaranty as security for the discharge of the duties thereof.

Said guaranty may consist of a deposit in the treasury of the State in coin or in bonds of the public debt, or either in agricultural or town property mortgaged for the purpose, guaranties which produce an annual income, the interest on which shall be fixed by a special decree, according to the conditions of each locality.

ART. 15. No oath of any kind shall be required of notaries in order for them to enter upon their duties.

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Possession shall be given them by the board of directors of the notarial association.

ART. 16. The duties of the office of notary are incompatible with all other offices which carry similar power, with any other public office which carries with it a salary or gratuity out of the general, provincial, or municipal appropriations, and with offices which require them to reside away from their domicile, excepting those of Deputies to the Cortes or provincial deputies, as the case may be.

TITLE III.

PROTOCOLS AND COPIES OF THE SAME CONSTITUTING A PUBLIC INSTRUMENT.

ART. 17. Notaries shall prepare original instruments, issue copies, and make protocols.

An original instrument is the one which a notary must execute on the contract or instrument submitted for his authentication, signed by the parties interested, by the attesting witnesses, or if proper, by the witnesses who identify, and signed and marked by the notary himself.

A first copy is the transcript of the original instrument which each of the parties interested has a right to receive for the first time.

By protocol is understood the collection, in proper order, of the original instruments authenticated during one year, which shall be included in one or more bound volumes, folioed by the number written out, and with the other requisites prescribed in the regulations.

ART. 18. Second or subsequent copies of an original instrument can not be issued except by virtue of a judicial mandate, and with the citation of the persons interested, or of the department of public prosecution when the latter are unknown or absent from the town in which the notarial office is situated.

Said citation shall be unnecessary in unilateral instruments, and even in others, when all the persons interested request the copy.

ART. 19. Notaries shall authenticate all public documents with their signature, and with the rubric and mark they may select for the purpose and which they can not subsequently change without authority from the Government.

In every audiencia there shall be kept a book in which notaries shall enter their signature, rubric, and mark before entering on the exercise of their duties.

ART. 20. Notaries can not authenticate any public instrument *inter vivos* without the presence of at least two witnesses.

ART. 21. Relatives, clerks, or servants of the notary issuing the certification can not be witnesses to public instruments.

Neither can the relatives within the fourth degree of consanguinity or second of affinity of the persons interested, nor those of the notary be witnesses.

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ART. 22. No notary can authenticate a contract which contains a provision in his favor, or to which any of the parties interested is a relative of his within the fourth civil degree or second of affinity.

ART. 23. Notaries shall certify in public instruments that they are acquainted with the parties thereto, or that they have assured themselves of their identity by the declaration of the attesting witnesses, or by two other persons who are acquainted with them, and who shall, therefore, be called witnesses of identification.

They shall also certify as to the residence and profession of the parties interested.

In serious and extraordinary cases in which it is not possible to state this data in full, they shall state what they themselves know on the subject and what is declared by the attesting witnesses and those of identification.

ART. 24. In all public instruments the notary shall state his name and residence, the names and residences of the witnesses, and the place, year, and day of the execution of the instrument.

ART. 25. Public instruments shall be drafted in the Spanish language, and shall be clearly written, without abbreviations and without blank spaces.

In the statement of dates or amounts therein, figures shall not be used.

Notaries shall certify to having read the instrument in full to the parties interested and to the attesting witnesses, or, to having permitted them to read it, as they chose, before they signed it, and to the witnesses of identification the part that refers to them, and to having informed them all that they have a right to read it themselves.

ART. 26. Additions, marginal notes, interlineations, erasures, or blots in original instruments shall be of no effect if they are not mentioned at the foot of the instrument and expressly approved of by the persons interested, and bear the signatures of the persons who must subscribe the instrument.

ART. 27. Public instruments shall be null:

1. When they contain any provision in favor of the notary who authenticates them.

2. In which relatives of the persons interested or the relatives, clerks or servants of the said notary appear as witnesses, in the degree mentioned.

3. In which the notary does not certify to being acquainted with the persons interested, or in which he does not state this fact in the manner prescribed by article 23 of the law, or in which the signatures of the interested parties and witnesses do not appear when they are required to sign, and the signature, rubric, and mark of the notary.

ART. 28. Provisions in favor of relatives of the person who authenticated the document containing the same, within the degree previously mentioned, shall have no effect.

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ART. 29. The provisions contained in the foregoing articles, relative to the form of the instruments and the number and qualifications of the witnesses, and to the capacity to receive what has been left or willed by the testator, are not applicable to wills and other provisions *causa mortis*, in which the special law or laws governing the matter shall be observed.

ART. 30. Instruments authenticated by a notary shall be admitted as evidence within the district of the audiencia in which he resides.

In order to be admitted as evidence outside of said district the signature of the notary who authenticated the instrument must be certified to by two other notaries of the same judicial subdistrict, and countersigned by the judge of first instance, who shall affix the seal of the court.

ART. 31. Only the notary legally in charge of the protocol may issue copies thereof.

ART. 32. Neither the original instrument nor the book of the protocol may be removed from the building in which they are kept, not even by virtue of a judicial mandate or superior order, except for transfer to the proper archives and in cases of *force majeure*.

However, an original instrument may be separated from the protocol if there appears sufficient reason or cause to consider it as proof of a crime, a previous order of the court taking cognizance of the case being necessary, and a verbatim certified copy in any case being issued with the consent of the department of public prosecution.

Neither shall notaries permit any documents to be taken from their archives which are under their charge by reason of their office, nor shall they permit it or the protocol to be examined, in whole or in part, without a previous judicial decree, except by the interested persons who have an acquired right, or their heirs or legal representatives. However, in the cases determined by law and by virtue of a judicial mandate they shall exhibit in their archives the protocol or protocols, in order to attend by virtue thereof to the proceedings that may have been agreed upon.

ART. 33. Notaries shall forward through the judge of first instance to the presiding judge of the audiencia, within the first eight days of each month, indices of the original instruments executed during the previous month, stating the ordinal numbers which the latter bear in the protocol.

In the indices there shall be stated, with regard to each instrument, the name of the parties thereto, that of the attesting witnesses, that of the witnesses of identification, in a proper case, the date of the execution, and the purpose of the instrument or contract.

ART. 34. Notaries shall keep a private book, in which they shall enter with the proper numeration a copy of the wrappers of sealed wills and codicils the execution of which they may have authenticated, and the protocols of the open wills when the testators request it, and they shall

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forward a private index to the presiding judge of the audiencia, through the judge of first instance, as prescribed in the preceding article. It is not necessary that there be one book for each year.

ART. 35. They shall further keep a private protocol, in which they shall enter original instruments recognizing illegitimate children when the persons interested do not desire to have them appear in the general protocol. They shall also transmit a private index of the instruments thus recorded to the presiding judge of the audiencia through the channel mentioned, and they shall not be required to form a different protocol for each year.

TITLE IV.

OWNERSHIP AND CUSTODY OF PROTOCOLS AND INSPECTION OF NOTARIAL OFFICES.

ART. 36. The protocols are the property of the State. Notaries shall keep them, in accordance with the laws, as archivists thereof, and under their responsibility.

ART. 37. There shall be in each notarial district general archives of public instruments, subject to the prescriptions of the regulations.

ART. 38. In the case of the vacancy of a notarial office and of the disability or incapacity of a notary, the person who, in accordance with article 6, is to take charge of the office, shall receive the protocols and other documents in accordance with an inventory, in order to return them, with the same formalities to the said notary, if he is reinvested in his office, or otherwise to his successor in office. The judges of first instance in seats of subdistricts and the justices of the peace in other towns shall be present when the inventory is taken and at the delivery.

ART. 39. In case of a partial or complete destruction of a protocol, the notary shall make a report to the judge and to the *promotor fiscal* of the subdistrict, and the latter to the presiding judge and *fiscal* of audiencia respectively, in order that the proper proceedings having been instituted with a citation of the parties, the indices and the books compared, and any other data which may be proper, examined, the protocols and books be restored as far as practicable.

ART. 40. Judges of first instance shall, whenever they consider it advisable, inspect the notarial offices situated within their subdistricts.

The government and presiding judges of the audiencias may order extraordinary inspections, for which they shall only appoint associate justices, judges or representatives of the department of public prosecution.

TITLE V.

GOVERNMENT AND DISCIPLINE OF NOTARIES.

ART. 41. All the notaries of the jurisdiction of each audiencia shall form notarial associations.

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ART. 42. The associations shall be directed by boards, and the judicial authority, the department of public prosecution, delegated by the Government, shall have the authority therein which will be established by the regulations.

ART. 43. For offenses against discipline and others which may affect the honor of the profession, the boards of directors of the associations may censure the notaries, reprimand them in writing, and administratively punish them by fines not to exceed 50 pesos. In cases of second offenses they shall report to the audiencias, which may impose fines not to exceed 200 pesos, besides advising the colonial department thereof, in order that a memorandum may be made in the respective records of the notaries, all without prejudice to any proceedings which may be just and other disciplinary powers of the judges and audiencias.

ART. 44. Notaries can not be suspended or removed from office by governmental order.

TITLE VI.

FEES AND REMUNERATION OF NOTARIES.

ART. 45. Notaries shall earn the fees fixed in the notarial schedule which shall be arranged for the purpose.

ART. 46. A notary who is incapacitated from exercising his profession on account of rescuing the protocols from flood, fire, or other *force majeure*, shall be entitled to a pension.

Should he die for the same reason, his widow and minor children shall have the same right.

GENERAL PROVISIONS.

ART. 47. All that is prescribed in the foregoing articles and in the annexed regulations shall be observed in the islands of Cuba and Puerto Rico from April 1, 1874.

The laws, provisions, and customs relating to the organization of notarial offices shall cease from this date to be observed and shall be considered repealed.

TEMPORARY PROVISIONS.

1. All persons who, at the time of the publication of these provisions, are, by virtue of the proper certificate, issuing both judicial and extrajudicial certifications, shall continue to exercise the same duties.

2. Proceedings actually being held pending decision, shall be decided in accordance with the laws and provisions in force at the time they were instituted.

Madrid, October 29, 1873.

The Colonial Secretary,

SANTIAGO SOLER.

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ORGANIC NOTARIAL REGULATIONS FOR CUBA AND PUERTO RICO.

TITLE I.

NOTARIAL OFFICES.

ARTICLE 1. In notarial offices there shall not be comprised territory located in different judicial subdistricts, with the exception of towns where there is more than one court of first instance, which shall be considered as one only.

ART. 2. All the notarial offices of each judicial subdistrict shall form a notarial district.

ART. 3. Notarial districts constitute the jurisdiction of the notarial association of each of the audiencias of the islands, respectively.

ART. 4. The number of notarial offices and their seat or place of residence of each notary shall be the ones designated in a special decree.

TITLE II.

APPLICANTS FOR NOTARIAL OFFICES, DECLARATION OF VACANCIES, AND THEIR PROVISION.

ART. 5. In order to aspire to the diploma to act as a notary, besides the qualifications prescribed by article 10 of the law, it is necessary to have no permanent physical impediment or defect preventing a full discharge of the duties of said office.

ART. 6. Notarial offices become vacant—

1. By transfer.
2. On account of the existence of permanent physical disability or moral incapacity, declared by virtue of administrative proceedings.
3. By a final judgment sentencing to perpetual, absolute, or special disqualification for the office of notary.
4. By the abandonment of the office.
5. By an accepted resignation.
6. By death.

ART. 7. After a notarial office has been declared vacant, its provision shall be announced in the official newspapers of the provinces included within the jurisdiction of the notarial association.

ART. 8. Vacancies, no matter what reason causes them, shall be filled, one by competitive examination, and another by transfer, two series within the jurisdiction of each notarial association being established for this purpose.

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In all cases the applicants shall present their written applications to the dean of the notarial association, within the period of thirty current days, to be counted from the day following the publication of the last announcement of the call.

ART. 9. The competitive examinations shall be held in the seat of the association and in the building designated for the purpose by the presiding judge of the audiencia.

The board of examiners shall be composed of:

An associate justice, who shall preside as the delegate of the presiding judge of the audiencia, by whom he shall be appointed.

A professor of notarial law, or in his place a professor of another branch of law, appointed by the rector of the university.

A practicing lawyer, selected by the presiding judge of the audiencia.

In the absence of the professor another lawyer.

The dean of the notarial association.

The secretary of the board of directors of the said association, who shall also act as secretary of the board.

ART. 10. Applicants shall be admitted to the competitive examinations in the order of presentation of their applications, for which purpose the secretary of the board shall make a signed memorandum on the former, stating the day and hour of presentation. The board shall call the opponents by stating the day, hour, and location in advance and giving the announcement due publicity. The applicant who, for any reason whatsoever, does not appear, shall lose his turn and be the last one. Should he not present himself then, he shall be considered as having abandoned it; but if he should duly prove that he was ill, or any other creditable cause, another period shall be granted him, which cannot be extended.

ART. 11. The competitive examination shall consist of two parts—a theoretical one and a practical one. Both parts shall be public.

For the theoretical examination 100 questions shall be placed in a box referring to theory and practice of notarial legislation, Spanish civil law, colonial legislation, mortgage legislation, duties of notaries, and general principles regarding the drafting of public instruments. The competitor shall draw eight questions by lot and shall answer them immediately, being allowed forty minutes for this examination; and should he conclude before they have elapsed, he may enlarge on the points he may select.

For the practical examination the opponent shall draw by lot one of fifty slips of paper contained in a box, which shall include the same number of subjects, in order to execute a public instrument to be drafted at once by the opponent, and when delivering it to the president he shall state what is to be done until the instrument is included in the protocols and the first copy is issued.

The examiner of the board shall make no announcement or observation to, nor ask any question of, the opponent regarding the subject-matter of the examinations.

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ART. 12. At the end of the competitive examination the board shall make the classification behind closed doors, and, taking into consideration the results of the examination, shall designate the competitors approved of as excellent, very good, good, or fair.

A classification shall be made for each notarial office, and also a list of three persons, both of which shall be forwarded to the colonial department through the presiding judge of the proper audiencia.

ART. 13. The Government shall appoint one of the three persons contained in the list.

ART. 14. The proceedings for the filling of vacancies in notarial offices by competition for promotion or transfer, shall be instituted in the colonial department. The applicants shall present their petitions through the board of their respective association within the period of the call, which, besides the announcement prescribed in article 7, shall be published in the *Gaceta de Madrid.*

The Government shall be free to select one of the applicants; but in no case shall they appoint a notary who has not served in his office for four years at least, to a vacancy of a higher class.

Notaries of Cuba and Puerto Rico, as well as those of the Peninsula and the Balearic and Canary Islands, may apply for said transfers.

ART. 15. All appointments of notaries made either by virtue of competitive examinations or by competition for promotion shall be published in the official newspapers of the territory of the proper association, stating the article of the law or of the regulations by virtue of which the appointment was made.

TITLE III.

DIPLOMAS, LAPSE OF APPOINTMENTS, BONDS, POSSESSION, AND OFFICIAL INSIGNIA OF NOTARIES.

ART. 16. Notaries-elect shall be allowed three months to secure their diplomas, computed from the date of the official publication of their appointment.

Should they not do so, they shall be understood to have renounced their right, and their appointments shall lapse, unless they have obtained an extension for just cause.

ART. 17. After the appointment of a notary has lapsed, in case of a competitive examination as well as that of a transfer, said vacancy shall be filled by one of the other applicants who applied at the time the first one was appointed.

Should the last appointment also lapse, the vacancy shall be announced and filled according to the series to which it corresponds.

ART. 18. A notary-elect shall not obtain his diploma without previously constituting the guaranty referred to in article 14 of the law, and presenting the document proving said constitution.

ART. 19. Diplomas of notaries shall be prepared in accordance with

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the form which shall be adopted for this purpose by the colonial department.

ART. 20. A new diploma shall be issued to every notary transferred, who shall annex it to the one he may have previously obtained, at the foot of which the presiding judge of the audiencia shall make a memorandum of cancellation.

ART. 21. When the notary obtains the diploma he shall present it as soon as possible to the board of directors of his association, which shall give possession to the notary-elect at a public meeting and on the day fixed by the dean.

ART. 22. On the same day of taking possession the notary shall appear, after the proper permission, before the presiding judge of the audiencia in order to enter his signature, rubric, and mark in the book which shall be kept in the secretary's office of the audiencia for this purpose.

ART. 23. A personal record of each one of the notaries of the district shall be kept in the secretary's office, or in the archives of the association. The diploma of the notary shall always be annexed thereto, by means of a certified copy issued by the same.

ART. 24. Within fifteen days following the taking of possession, which is the act of incorporation into the association, the notary shall establish himself at his place of residence, and shall immediately enter on the discharge of his duties, giving notice thereof through a communication, in which he shall make known his mark, signature, and rubric to the judge of first instance of the subdistrict, to the justice of the peace of the town, and to the other authorities or officials whom he considers proper to advise.

ART. 25. All notaries may use as the official insignia of their office an oval gold medal 19 millimeters from end to end and 15 wide, with a broad thread surrounding it, containing on the obverse a closed protocol book, and surrounded by two olive branches, with the following motto around it: *Nihil prius fide;* and on the reverse the date of the notarial law of May 28, 1862. Said medal shall be worn on the left side of the chest, suspended from a white and green ribbon.

TITLE IV.

INCOMPATIBILITIES AND PROHIBITIONS OF NOTARIES.

ART. 26. Notaries can not certify outside of the notarial district to which the town of their residence corresponds.

They may practice in the town of their residence and also in all of the towns of the same district; but a notary may only go to the town of the domicile of another notary in order to certify to contracts or last wills if previously and specially called, in cases of sickness or physical disability of any of the parties which prevents them from coming to the residence of the notary called, which must appear in the instrument, under the strictest responsibility of the authenticating notary.

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ART. 27. Notaries can not be surety for the contracts they certify to, nor take part in the notarial district:

1. In transactions of speculation, exchange, or profit which are not the income of their own property.

2. In the administration of any bank or discount or brokerage establishment of a commercial or industrial company or of enterprises for leasing public revenues.

3. In contracts or business in which they take part by virtue of their office.

ART. 28. In the case of the last paragraph of article 16 of the law, a notary who is obliged to leave his residence as a Deputy to the Cortes or as a provincial deputy shall, under his responsibility, make a memorandum immediately after the last original instrument of his current protocol of the day and the reason for his absence, officially advising the presiding judge of the audiencia, the judge of first instance of the district, and the dean of the notarial association of the territory.

He shall make a memorandum of his return with the same formalities.

ART. 29. Besides the provisions contained in article 16 of the law, notaries who are appointed in accordance with the same can not, for any reason whatsoever, exercise judicial powers in inferior and superior courts, no matter of what denomination and class the latter may be.

ART. 30. The relatives of a notary within the fourth civil degree of consanguinity or second of affinity can not apply for appointment as notaries of the same town, unless there are four or more notarial offices in the latter which are filled by notaries who are not relatives.

ART. 31. Notaries can not certify to incidents which occurred in public acts presided over by a competent authority without first submitting it to the same. Said authority can not make any opposition to the former discharging the duties of his office, after having complied with the aforementioned requisite.

TITLE V.

PROTOCOLS, ORIGINAL INSTRUMENTS, AND INDICES OF THE SAME.

ART. 32. Each protocol shall include the original instruments of each year, counting from January 1 to December 31, both inclusive, even if during said year the notarial office has become vacant and a new notary may have been appointed.

ART. 33. All original instruments shall bear the proper number, written in letters, by order of dates.

ART. 34. All the pages of the protocol shall be folioed with their number according to the proper order, also written in letters; besides this numeration the figures may be added.

ART. 35. All the sheets of original instruments shall be composed of full sheets of stamped paper, in accordance with the provisions in force or which may hereafter become operative.

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ART. 36. On the side by which original instruments are to be bound they shall have a blank margin of 20 millimeters, besides one of 60 millimeters on each page at the left of the text, in which the notary shall make his rubric.

The edges of the paper shall not be trimmed nor cut for any reason whatsoever.

ART. 37. Notaries can not commence the drafting of any original instrument except on a new sheet, and on the face or page of the paper which contains the stamp, continuing the instrument on the sheet which is not stamped; nor may they use for the protocol anything but entire sheets, it being required that the pages of the same which remain blank be folioed, which shall be considered as margins on which to continue legal annotations of the respective instruments after the margin is filled.

ART. 38. The first page of the first sheet of each protocol shall contain the following title:

"Protocol of the public instruments corresponding to the year ———."

And after dating it in letters it shall be signed and rubricated.

Every protocol shall be closed in the same manner on the last day of each year, the following memorandum, authenticated by the notary, being placed immediately after the last instrument:

The protocol for the year ——— is closed, containing ——— public instruments and ——— folios, certified to by me, the undersigned notary of N.———, and I hereby certify to not having authenticated any others.

And he shall mark, date in letters, sign, and rubricate.

ART. 39. When the annual protocol, on account of its volume, should be bound in more than one volume, in the judgment of the notary, the first one shall be closed and the second one begun with the memoranda mentioned in the foregoing article, changed in so far as may be necessary in order to state the months included in each volume. The different volumes shall not be considered different protocols, for which reason the paging begun in the first volume shall not be interrupted and a new paging commenced in the second. It is necessary to state in the final memorandum of the last volume of each protocol, besides the number of instruments and folios of the volume, the number of instruments and folios which together form the protocol.

ART. 40. When a notarial office becomes vacant the justice of the peace of the town of the residence, accompanied by the clerk of the inferior court, shall repair to the office in order to make the following memorandum immediately after the last instrument of the current protocol, which shall be dated in letters and signed by both:

This notarial office has become vacant on account of ———, there being up to the present time in this protocol ——— authenticated public instruments and ——— folios, to which I certify. [Date and signature.]

ART. 41. Notaries shall carefully preserve in wrappers the original instruments until the protocol is bound.

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The wrappers shall be of a size slightly larger than that of the stamped paper, and the sheets of the instruments must not be folded therein.

ART. 42. Within the first eight days of each month, according to article 33 of the law, the notaries shall forward to the presiding judges of the audiencias an index of the original instruments executed during the previous month, or shall certify that none have been executed.

The indices and their copies shall be made on paper stamped with the stamp of the office.

In the case mentioned in article 40 of these regulations the justice of the peace and his clerk shall make the index of the instruments authenticated and not included in the last monthly index, forwarding it to the presiding judge and leaving the copy as has been prescribed. The indices shall be drafted in accordance with the form contained at the end of these regulations.

ART. 43. In the first two months of each year the protocols must be bound, with the exception of the private ones, which are in course of formation in accordance with the law.

ART. 44. Notaries are responsible for the completeness and preservation of the protocols, either in wrappers or bound, if they become impaired on account of lack of care, and shall restore them at their own expense, besides incurring the fine or disciplinary correction to which they have made themselves liable.

If there is any reasonable cause to suspect that a crime has been committed, the institution of an action shall immediately be begun.

ART. 45. The protocol shall be bound in parchment, under the responsibility of the notary; the inside cover shall be larger than the outside one on the three sides which are not sewn, so that being folded over the edges of the protocol they may be fastened or closed over the outside cover, the edges of the sheets of the protocol being thus protected.

On the back of the same the following shall be written in large characters: "Protocol, year of ——— (whatever it may be, in figures)."

ART. 46. Notaries shall keep the protocols under lock and key in the same building in which they reside.

ART. 47. As a general rule all protocols are secret.

With regard to the protocols specially kept private, treated of in articles 34 and 35 of the law, the formalities prescribed for general protocols shall be observed in so far as applicable, complying with the provisions of the articles of the law herein mentioned.

They shall be bound at the end of the year during which the instrument bearing No. 100 was authenticated. In the meantime their wrapper shall have on the tape two bands of crossed paper fastened with a wafer at their point of crossing, and it shall be rubricated. Whenever a new original instrument or a copy of the wrappers of closed wills and codicils is to be placed in the wrapper, in accordance with the aforesaid

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articles of the law, said bands shall be broken and new ones placed thereon with the proper formalities until they are bound.

The title on the volume of the latter or on the face of the wrapper, if they have not yet been bound, shall be—

For the packages referred to in article 34 of the law: "Private testamentary protocol. Year of ——— (in figures)."

For the protocols treated of in article 35 of the law: "Private protocol. Affiliations. Year of ——— (in figures)."

ART. 48. Nothing but black ink without ingredients which might corrode the paper, or cause the writing to fade, blot or disappear, shall be used for original instruments.

ART. 49. Notaries shall certify to public instruments under their own hand, first making their mark, and then signing and rubricating below the mark.

ART. 50. No notary shall make his mark or sign with a stamp.

ART. 51. Original instruments shall be drafted in accordance with article 25 of the law, a clear, pure, and precise style being used, without any phrase or word which is obscure or susceptible of ambiguity.

When it is necessary to introduce a document, paragraph, phrase, or word written in another language or dialect, its translation shall be placed immediately thereafter, or what the party understands by the foreign phrase, word, or name shall be explained.

ART. 52. The abbreviations and blank spaces treated of in article 25 of the law do not refer to initials, abbreviations, or phrases sanctioned by custom, titles of honor, expressions of courtesy, of respect, or of honored memory, nor shall the blank spaces left at the end of a line be considered such when the following one is the beginning of a paragraph; but in the latter case the blank space must be covered by a line made with the same ink as used in the drafting of the document.

ART. 63. Original instruments shall be signed in accordance with the second paragraph of article 17 of the law and in the presence of the number of witnesses prescribed by article 20 of the same; but if the parties or any one of them does not know how or can not sign, the notary shall state this fact, one of the witnesses being required to sign, writing in his own hand before the signature that he does so in person as a witness and in the name of the party or witness who does not know how or is not able to do so.

ART. 54. For the purposes of article 20 of the law, by public instruments *inter vivos* is understood all those which are executed without consideration or relation to the death of the executor.

ART. 55. One at least of the witnesses required for public instruments *inter vivos* must be able to read and write, should the parties interested not be able to do so.

If the parties interested know how to sign, it shall not be necessary for the witnesses to sign, nor that one of them should be able to do so.

When witnesses of identification are also necessary, in accordance

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with article 23 of the law, one at least must be able to sign, and shall sign, and in both cases the details regarding the witnesses prescribed by article 24 of the law shall be stated.

ART. 56. The impediments treated of in article 21 of the law do not refer to witnesses of identification, when they assist in that capacity only.

ART. 57. As a general rule witnesses of identification shall not be so called except when neither the notary nor the attesting witnesses are acquainted with the parties. If the notary only is acquainted with them, the witnesses of identification shall not be necessary, the former stating this fact. If only one of the attesting witnesses is acquainted with them, one witness of identification only shall be necessary, even though he is not able to sign. The notary must be personally acquainted with all the witnesses of identification.

ART. 58. In the cases of the third paragraph of article 23 of the law in which it is impossible for a notary to certify as to being acquainted with the parties interested, and the latter can not present witnesses of identification, he shall so state it, mentioning the two documents which are presented to him in proof of the name, status (whether married or single), residence and origin, besides giving the reason for the serious or extraordinary cause referred to in the aforementioned article of the law.

ART. 59. The obstacles to being witnesses to public instruments established by articles 21 to 27 of the law refer only to the clerks or amanuenses, whether they receive a salary or not, and to servants; but not to students and alumni who are in the notarial office, provided they do not receive a salary.

ART. 60. The parties interested may object to certain persons acting as witnesses to the instrument, unless they execute it by virtue of law or a judicial mandate.

ART. 61. The presence of the witnesses is required for the reading, approval, and signature, all of which shall take place at the same time.

ART. 62. Persons who are capable of being witnesses to public instruments commit an honorable and praiseworthy act. In cases of necessity, and at the instance of a notary, the local authorities must administratively compel one or more residents to appear as witnesses to a public instrument.

ART. 63. It shall not be necessary for a notary to state at the end of each written clause of the instrument in question that he certifies to the same, nor to the conditions or legal circumstances of the persons or things referred to; it shall be sufficient for him to state once in each public instrument that he certifies to all that is contained therein in order to have said statement include all words and real or personal stipulations and conditions contained in the instrument, in accordance with the laws.

ART. 64. The certification as to the knowledge of the profession and

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residence of the parties, which a notary is required to issue as prescribed by the second paragraph of article 23 of the law, shall be sufficient that it be in accordance with the statement of the said parties.

ART. 65. A notary, when his own private obligations are involved, may also be a party to the instrument, writing before his signature *by me* and *before me* and he may in a similar manner authenticate the obligations of his relatives.

ART. 66. The placing in the protocol of all kinds of instruments and contracts prescribed by the laws is the exclusive privilege of notaries.

When, by virtue of judicial instruments, proceedings, or suits, it becomes necessary to draft an original instrument, the judge or court taking cognizance of the former shall order that it be authenticated and placed in the protocol by a notary residing in the town where the court is established, for which purpose the original decrees and any other data necessary for the compliance with the order shall be furnished him.

The selection from among the notaries filling said conditions shall be made by the persons interested if the designation is unanimous; otherwise the selection shall be made by the judge or court.

A protocol of judicial instruments shall not be kept for any reason whatsoever.

TITLE VI.

COPIES OF THE PROTOCOL AND OF CERTIFICATES AND INSTRUMENTS AUTHENTICATED BY NOTARIES.

ART. 67. By public instrument shall be understood, besides the original instrument, the copies of the same issued with the legal formalities.

ART. 68. Public instruments shall contain a precise citation of the protocol and of the number of the original instrument according to the same, of which they are a copy, and they shall be issued, marked, signed, and rubricated by the notary on stamped paper and with the other legal formalities.

ART. 69. First copies shall always be issued with a statement of their class.

Two or more copies may be issued, but each person interested or party thereto can not demand more than one of the notary.

ART. 70. At the time of the issue of any first copy the notary shall make a memorandum at the margin of the original instrument and above his signature, of the person or persons for whom said first copy is issued, the date of the issue, and the class of stamped paper on which it is drafted, besides stating all these details in the subscribing clause with which the public instrument is closed, according to article 68.

ART. 71. In addition to each one of the parties thereto, according to article 17 of the law, persons basing their claims thereon have a right

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to a first copy—as, for example, a lender—in an instrument constituting a loan, although he does not execute it; a payer, although he does not issue the receipt, and other similar ones; notaries in a case not specified observing the customs and general jurisprudence.

ART. 72. The person who appears to have obtained his first copy, according to the protocol, can not obtain another one without the formalities of article 18 of the law. Whenever second copies are issued, a memorandum shall be made in the same manner as indicated for first copies in article 70; stating also in the authentication or *concordance* that it is a second copy; the number of the time it has been issued, for what person, the date of issue, on what stamped paper, and the date of the judicial mandate.

The latter shall not be necessary when the citation treated of in article 18 of the law is not required.

ART. 73. In order to issue copies in accordance with article 31 of the law, it shall be understood that the protocol is legally—

1. In charge of the notary in possession of the notarial office.
2. In charge of the notary charged with the same when it is vacant or the owner is absent or incapacitated.
3. In charge of the archivist, when archives of the notarial districts exist.

Courts shall never, either officially or at the instance of an interested party, order clerks of courts who act simply as recording clerks (Escribanos actuarios) to issue in fulfillment of judicial orders copies of original instruments, but they shall demand them of the notary who is required to issue them in accordance with the law and the preceding paragraphs. The provisions contained in the third paragraph of article 32 of the law shall be observed, with regard to the comparison or acknowledgment of these copies.

ART. 74. By a legalization is understood the certification written immediately after the instrument, dated, marked, signed, and rubricated by two notaries, certifying that the notary who authenticates uses a mark, signature, and rubric similar to those which appear, and which seem to be of his own hand, and that he was practicing on the date of the instrument, nothing to the contrary being known.

ART. 75. When, in accordance with article 30 of the law, there do not exist two notaries in the district who can legalize, the judge of first instance will legalize with his countersignature and the seal of the court.

ART. 76. Notaries who are members of the board of directors of each notarial association may, during the time they hold said position, legalize the mark, signature, and rubric of each of the notaries of the territory.

ART. 77. No notary can refuse to legalize without giving good reasons; but if he has any reason to doubt as to the authenticity of the mark and signature, he may suspend its legalization for three days, in order to dispel his doubts.

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Should he not be able to do so, he can refuse to legalize, and in such case he shall immediately address a communication to the judge of first instance and to the dean of the notarial association, informing them thereof.

ART. 78. Notaries may receive in deposit the documents, bonds, and sums which private persons may desire to deposit with them, either as security for the fulfillment of contracts or for safe-keeping.

The admission of these deposits is voluntary, and the notary may impose conditions upon the depositor, which shall be stated in the receipt or document of security issued by the notary.

ART. 79. Notaries, in order to keep a record of depositions for presentation as evidence, of certificates of existence and certifications of the legality of signatures as well as of the legalizations of marks, signatures, and rubrics of notaries, shall make a memorandum in a book kept for the purpose. The memorandum shall consist of a very brief entry, sufficient to show the work done. Every entry shall be authenticated with the surname of the notary, one being made immediately after the other. The book shall be composed of stamped paper of the same class as that of the protocol, and when, on account of the volume of the former, the notary considers it proper, he shall have it bound.

A report of such memoranda or entries is not required in the monthly index.

ART. 80. All notarial memoranda made at the instance of a party and not included in the provisions of the preceding article shall be signed by the notary and by the persons interested, and if any of the latter do not know how or can not or will not sign, this fact shall be stated. These memoranda shall be made in the same manner as the original instruments in the current protocol; they shall be included in the monthly indices, and as many copies as they may request shall be issued to the persons interested, duly marked, signed, and rubricated, without stating whether they are first, second, or subsequent ones, and on the same class of paper as the depositions for presentation as evidence.

TITLE VII.

ARCHIVES OF PROTOCOLS AND OFFICIAL INSPECTIONS THEREOF.

ART. 81. Archives of protocols are general and special.

The former are the district archives established in the seat of each judicial subdistrict. The latter are the private ones of each notary.

ART. 82. No person who is not a notary shall be permitted to have archives of protocols in his possession.

ART. 83. General archives shall be made with the protocols, books, and documents of the notarial offices included in the respective territory of each district, which are more than thirty years old. The thirty latest protocols shall form the special archives of each notarial office, and every year the proper protocol shall be sent to the general archives.

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The private book and protocol referred to in articles 34 and 35 of the law shall be forwarded to the general archives thirty years after the date of their commencement.

ART. 84. The general archives of each district shall be in charge of a notary whose residence is in the seat of the same district.

The appointment of the archivist of protocols shall be made by the colonial department.

ART. 85. The judge of first instance shall give possession to the notary archivist, having the books and papers of the archives turned over to him according to inventory in his presence and in that of the secretary of the court, making a memorandum, the original of which shall remain on file in the archives, and copies thereof being sent to the board of the notarial association and to the president of the audiencia.

The inventories of archives must necessarily contain a statement of all the papers of the same; and with reference to the protocols, they shall state their number, folios of each volume, notaries who authenticated them, and years they include.

ART. 86. Notary-archivists can not be suspended nor removed from office except for the reasons and in the manner prescribed for notaries.

ART. 87. All expenses incurred by reason of the organization, custody, preservation, and others relating to the archives, shall be defrayed by the notary-archivist.

ART. 88. Archivists shall receive for the safe keeping and search for instruments and for the issue of copies, the fees fixed in the notarial schedules.

ART. 89. Notaries shall personally take to the general archives of the district to which they belong the protocol or protocols and books, which they must deposit there every year, guarding them up to the instant they personally deliver the same to the archivist.

ART. 90. Said general archives shall be subject to the inspection and surveillance of the boards of directors of the notarial associations and of the presiding judges of audiencias.

Either one of them may order, when they consider it advisable, ordinary or extraordinary inspections of certain archives, making the proper memoranda.

ART. 91. Judges of first instance as delegates of the presiding judge of the audiencia shall make an annual inspection of the archives of protocols of their district, making a memorandum of what they may observe with regard to the condition of the protocols and of the building in which they are kept, as well as of the care of the same collections of instruments, forwarding a copy of the memorandum to the presiding judge of the audiencia of the territory.

In towns where there is more than one judge of first instance the senior in service shall be delegated.

ART. 92. Boards of directors and presiding judges of audiencias may

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discipline notary-archivists for any errors they may commit in the discharge of their duties, which shall consist of warnings, reprimands, or fines up to 200 pesos.

ART. 93. In the case of the destruction of the whole or of a part of a protocol, besides the obligations prescribed for notaries by article 39 of the law, they must also inform the board of directors of the association.

If the notary interested can not comply with the prescriptions of said article of the law and of the present one, any other notary residing in the same locality shall do so. Should there not be another one the justice of the peace shall have this obligation.

ART. 94. Besides the authorities stated in article 40 of the law to inspect protocols in ordinary or extraordinary cases, the authorities of the public treasury may order special inspections of notarial offices, only with regard to the legal use of stamped paper; but in accordance with the said article 40 of the law, there shall be appointed for this purpose the *fiscales* of the treasury and the *promotores* of the inferior courts, who are the legal representatives of the treasury.

These may commission to the inspection of certain notarial offices, justices of the peace of the town where the protocol to be inspected is situated.

ART. 95. The boards of directors of the associations may also delegate one or more of the members of the association to inspect certain notarial offices, in order to remedy the defects or omissions capable of correction in the manner of writing and keeping the instruments and protocols and to assure themselves of the exact and uniform compliance with notarial obligations in the entire territory, the board imposing the penalties considered proper and which are in their power.

TITLE VIII.

ORGANIZATION AND DISCIPLINE OF NOTARIES AND ADMINISTRATIVE CORRECTIONS.

ART. 96. Notarial associations shall be established in every town where there is an audiencia, which shall be called "Notarial association of the territory of ———."

ART. 97. The notarial association shall be managed by boards of directors composed of—

One president, with the title of dean of the association.

Two censors.

One treasurer.

One secretary.

ART. 98. Only notaries who reside in the seat of the territory may be elected to the foregoing offices, and they shall be elected by the majority of the votes of all the association notaries.

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Notaries who do not reside in the seat may forward their votes in a sealed envelope.

ART. 99. The office of member of the board shall be triennial, obligatory, honorary, and without pay.

The election shall take place from December 15 to 24 if it be a general one, and the persons elected shall take possession from the following 1st of January. If it be for a specified position it shall take place within thirty days after the vacancy has occurred and for the time of the triennial remaining until the entire renewal of the board.

ART. 100. The boards of directors shall elect a notary in each district, who shall be called delegate, and another one to take his place, who shall be called subdelegate. Through these persons the board of directors shall maintain the most rigorous discipline among all the notaries; they shall uniform the practice and shall do all that is necessary for the best public service and the decorum of the class. The office of a delegate of a district shall be for three years, but the board may reelect the same notary.

This position is also honorary, gratuitous, and obligatory, with the exception of a case of reelection.

ART. 101. Notaries in so far as their disciplinary organization is concerned, are under the jurisdiction of the judge of first instance of the subdistrict, of the board of directors of their association, of the chamber of administration of the territorial audiencia, and of the colonial department.

ART. 102. Besides the powers granted boards of directors of notarial associations by article 43 of the law, they shall have the following:

1. To communicate officially with presiding judges of audiencias and with the colonial department.

2. To communicate in the same manner with boards of other associations, in order to prepare in an identical manner all data and information which may be requested by the department or the presiding judges and *fiscales* of audiencias for any reason whatsoever. .

3. To prevent or compose differences which may arise between notaries by reason of their office.

4. To prepare the annual budget of the administrative expenses of the association, levying on each one of the members thereof for the amount he is to contribute thereto, and which shall not exceed in one or more annual assessments the amounts fixed for the purpose at a general meeting.

5. To collect and disburse the funds of the association, submitting an annual report and justified statement to the presiding judge of the audiencia.

The boards shall also be under the obligation to form and keep a personal record of each notary, with a memorandum regarding their vicissitudes, merits, and services, as well as to keep all of their decisions in a paged book authenticated by the dean and the secretary.

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The other attributes of boards and of each member thereof, not stated in the law nor in these regulations, shall be included in the private rules and regulations of each association.

ART. 103. Judges of first instance, at the suggestion of the boards of directors of associations, shall impose the disciplinary corrections which must be applied to notaries of their district, at the instance of the *promotor fiscal* or officially. There shall be no other remedy against their decision except an appeal to the chamber of administration of the audiencia.

ART. 104. The chambers of administration of audiencias may proceed against the boards of directors of associations, at the instance of the *fiscal* or officially, imposing on them fines not to exceed 200 pesos and the other correctional penalties established by the law. From the decision of the chambers of administration the boards of associations may appeal to the colonial department, which may annul or reduce the correction imposed, but never increase it.

ART. 105. From the decision of the board of directors, by virtue of article 43 of the law, an appeal lies to the chamber of administration of audiencias.

ART. 106. The appeals treated of in the preceding articles, with regard to the imposition of fines, shall not be admitted if the payment of the same is not previously proven.

ART. 107. As a coercive measure, the colonial department may also impose fines not to exceed 200 pesos on boards of directors of associations and on notaries.

ART. 108. The cash fund of the associations in charge of the treasurer shall be composed of—

1. The amount collected from notaries.

2. The part of the schedule fees to which the notaries, at a general meeting of the association, agree by an absolute majority, with the previous approval of the Government.

ART. 109. Notarial associations may hold general meetings in the seat of the territory in order to discuss only subjects of interest to the class or practice of the profession.

A general meeting can not be called except by the presiding judge of the audiencia, at the instance of the respective board of directors of each association.

The presiding judge of the audiencia shall preside over the general meeting, unless he appoints, as he may do, a person authorized to preside.

The sessions of the general meeting can not last more than eight days.

At the general meetings the notaries of the territory may assist personally and vote, when they are not the only ones in their place of residence, and those of the residence of several notarial offices, provided they leave therein some notaries to attend to the public service.

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Notaries who do not take part in the general meeting may send their vote in writing and sealed, or delegate their powers to any of those who do assist.

TITLE IX.

TRANSFERS, EXCHANGES, LEAVES OF ABSENCE, RESIGNATIONS, SUBSTITUTIONS, AND DISQUALIFICATIONS OF NOTARIES AND CLASSIFICATION OF NOTARIAL OFFICES.

ART. 110. Notaries may request their transfer to another notarial office in accordance with the prescriptions of the law and these regulations regarding the filling of notarial offices by competition for promotion.

ART. 111. Notaries may be transferred to a notarial office of the same grade as the one they are in possession of within or without the territory of the same association, for just cause, duly proven in administrative proceedings at which the interested person, the board of the notarial association, and the chamber of administration of the audiencia shall be heard.

As just cause shall be considered any serious offense committed in the discharge of his duties or any other which lowers the notary in the opinion of the public. The person who is to be transferred in accordance with this article may only fill one of the vacancies corresponding to the transfer series.

ART. 112. Only in cases of public benefit, in the judgment of the Government, after receiving reports from the chambers of administration and the boards of directors of the associations, and taking into consideration the age, health, and other circumstances of the persons interested, may exchanges between notaries be consented to, provided they have notarial offices of the same grade and that there is not more than ten years' difference in the age of the persons effecting the exchange.

ART. 113. Notaries may absent themselves from their offices when there is no urgent need for their services—for five days those residing in towns where they are the only ones; for ten days where there are two, and for fifteen days where there are more. Whenever they make use of this privilege they shall advise the dean of the association, or the delegate or subdelegate thereof, according to the cases.

If any of them or the judicial or administrative authorities notice an abuse of this authority on the part of any notary, they shall inform the board of directors of the association, which shall impose the proper disciplinary penalty, reporting it to the presiding judge of the audiencia.

With the exception of the case mentioned in the preceding paragraph, notaries can not absent themselves without previous permission, which shall be granted for sufficient reasons by the board of the notarial association for a period not to exceed two months, and by the presiding judge of the audiencia for a period exceeding two months and

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not more than four, after receiving a report from the board. In the first case the request for the leave of absence shall be addressed through the delegate or dean to the board, and in the second through the latter to the presiding judge. The Government only may grant leaves of absence for more than four months, after receiving a report from the board and the presiding judge.

Every notary who enjoys a leave of absence shall be under the obligation to inform the dean of his return to take charge of his notarial office on the same day he does so. The boards of the associations shall see that no notary exceeds the leave of absence granted him, and should any exceed said period they shall advise the presiding judge of the audiencia thereof.

ART. 114. Notaries may resign from their office, but not in favor of a determined person. The powers and obligations of notaries who resign shall not cease until the resignation has been accepted.

ART. 115. When for any reason whatsoever there does not exist the legal substitute for each notarial office, and the notary is temporarily incapacitated, he may appoint another notary of the same town to take his place. Should there not be another one, the one of the nearest residence shall substitute him.

ART. 116. It is understood that the substitution treated of in article 6 of the law is temporary; therefore the transfer of protocols to the notarial office of the substitute is not obligatory; but the latter shall take charge of the key of the office in which they are kept, and adopt any other measures he may consider prudent for the security of the same. The documents he authenticates shall be placed in the protocol of the notarial office of the person substituted. The former shall state the reasons, and shall credit to the latter half of the fees collected during the substitution.

ART. 117. When a notary is permanently incapacitated, being over 60 years of age and having filled the office for a period of twenty years, he may request that his office be declared vacant, the person taking the same being under the obligation to pay the former an annuity during his lifetime, the amount of which shall be fixed in each case, this incumbrance being mentioned in the announcement which may be made to fill the vacancy.

ART. 118. If the notary becomes incapacitated for any of the reasons mentioned in article 46 of the law, he may make use of the privilege granted him in the preceding one, notwithstanding that he has not reached the age nor served the years prescribed; but in such case he shall lose the right to the pension treated of in the said article 46 of the law.

ART. 119. The boards of directors of the associations may grant from the funds of the same the concession of a fixed sum, and for once only, to a notary who has made efforts to save his archives or those of another notary from flood, fire, or other force majeure, even though he has not been incapacitated nor suffered any personal bodily injury.

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ART. 120. For all legal effects notarial offices shall be classified in accordance with the following order of grades:

1. Of the seat of an association.
2. Of the seat of a district.
3. Of any other point.

ART. 121. Notarial associations shall have the special regulations for their local management which may be adopted at a general meeting; but the draft of their regulations shall be submitted to the approval of the Government.

They may in the same manner create mutual benefit associations or such associations as they may consider advisable.

TEMPORARY PROVISIONS.

1. All individuals who, under any title and with the proper diploma, issue extrajudicial authentications shall be called notaries. They shall continue to officiate, but with strict subjection to the requisites and duties or limitations fixed by their respective diplomas.

2. All notaries who at the time of the publication of these regulations are discharging duties not incompatible up to the present time with the notarial profession, may continue to do so, provided they are not required thereby to reside outside of the locality of their notarial residence indicated in the diploma.

3. The Government shall at once issue the proper rules in harmony with temporary provisions Nos. 3 and 4 of the law of May 28, 1862, and article 5 of the law of June 18, 1870, in order that the alienable public offices be classified, the rights of the holders thereof declared, and that the proper indemnity be paid them by reason of the reincorporation of said offices into the State.

4. The Government, after the proper reports, shall equitably decide in all special cases the questions and consultations submitted with regard to the application of the reform of notarial offices in the personal part as well as in all that relates to the institution of public certification.

5. All provisions and practices conflicting with the execution of these regulations are hereby repealed.

Madrid, October 29, 1873.

SANTIAGO SOLER,
Secretary for the Colonies.

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APPENDIX I.

Royal decree of May 16, 1878, reducing the fees fixed by the Notarial Schedules approved for Cuba and Puerto Rico on November 8, 1874, by 20 per cent.

SIR: By a decree dated November 8, 1874, there were approved, with a provisional character, the notarial schedules which are at present in force in Cuba and Puerto Rico, it being ordered at the same time by the eighth of the general provisions of the aforesaid decree that the notarial boards of the seats of audiencias, taking into careful consideration the requirements, number of transactions, income of the notarial offices, and other similar circumstances in each territory, draft a new project, which, after a report from the bars, and after hearing the opinion of the proper court sitting in full, was to be forwarded to this department for the proper effects.

Everything has been carried out in the manner prescribed, and the proceedings terminated with the report issued by the colonial department of the council of state.

Taking into consideration that the opinions of the different bureaus and corporations consulted are not in harmony, the undersigned secretary judges that the dissatisfaction occasioned in the colonies by the notarial schedule in force is evident.

The deputies for Puerto Rico, urged by their constituents, have several times indicated their desire and even the urgent necessity to reduce the rates fixed in said schedules, and there is no doubt as to the advisability of radically modifying the schedules in force at the present time, substituting for them other more equitable ones and changing the general idea of their plan and system.

In the meantime, after a fuller examination of the question and in view of the data which constitute the proceedings instituted by the department of grace and justice for a similar reform in the Peninsula, the time has arrived to lay before Your Majesty the proper, definite determination, the justice and advisability of modifying the provisional regulations in force appearing evident, by reducing all the sections of the schedule of November 8, 1874, by 20 per cent.

The annexed project includes two other amendments which refer to the general provisions of said schedule. By the first one private persons who consider themselves injured may impugn the accounts of notaries before justices of the peace, with an appeal to the judge of first instance and without any subsequent remedy, instead of to the audiencia of the territory, by which the exercise of their right is facilitated to the persons interested, saving them considerable expense. The second one is prompted by the necessity to harmonize Nos. 4 and 5 of the schedule with the provisions which the mortgage law, as applied to Puerto Rico, and which by a decree of this date is extended to the island of Cuba, established as a minimum rate for the purposes of records in registries of property.

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By virtue of the reasons expressed, the undersigned has the honor to submit for the approval of Your Majesty, the following draft of a decree.

Madrid, May 16, 1878.

Sir, at the royal feet of Your Majesty,

SALVADOR DE ALBACETE.

ROYAL DECREE.

By virtue of the suggestion of the secretary of the colonies, and in accordance with the council of secretaries, and hearing the colonial department of the council of state,

I hereby decree the following:

ARTICLE 1. All sections of the notarial schedules provisionally approved for the islands of Cuba and Puerto Rico by a decree of November 8, 1874, are hereby reduced by 20 per cent.

ART. 2. The opposition which, in accordance with general provision No. 4, may be brought by the persons interested against the accounts of notaries, shall be instituted before a justice of the peace, with an appeal, if proper, to the judge of first instance of the subdistrict in which the notarial office in question is situated, without further remedy, the liability of the judge rendering the decision being always reserved.

ART. 3. Numbers 4 and 5 of the schedule are modified with regard to the value of articles which are the subject of contracts, according to the prescriptions of general provision number 6 and in accordance with the provisions of the mortgage laws.

ART. 4. The provisions of this decree shall go into operation on the 1st of next July, and after publication of the annexed modified schedule in the *Gacetas* de Cuba and Puerto Rico.

Issued at the Palace on May 16, 1879.

ALFONSO.

SALVADOR DE ALBACETE,
Secretary for the Colonies.

Notarial schedules which shall be provisionally in force in the islands of Cuba and Puerto Rico by virtue of the preceding decree.

No.	ORIGINAL INSTRUMENTS.
1	For each sheet of an original instrument in all kinds of contracts, wills, nuncupative codicils, and other instruments not expressly excepted in this schedule, 7.50 pesetas.
2	For the examination of prior data and for that of documents which must be attached to the registry or included in its copies, or which are necessary to prove the identity of the contractors, for each sheet, 0.24 céntimos.
3	If the documents mentioned in the preceding number have to be renewed on the proper stamped paper, for each memorandum made on the new copy, 1 peseta.
4	For original instruments or recordable contracts involving articles or sums not exceeding 1,500 pesetas, 1.60 per 100.
	In those which involve amounts of more than 1,500 pesetas to 2,500, 2.20 per 100.
	For fees for the copy of said instrument which are to be taken to registers of property, half of the fees fixed for the respective original instrument shall be charged.
5	For original instruments of all kinds of contracts involving articles or sums above 2,500 pesetas to 6,250, fees shall be charged in accordance with No. 1 of this schedule. (Those of No. 1.)
6	In contracts with a right of repurchase, exchange, award in payment of debts, impositions of annuities (censos), and others involving the real delivery of cash, or its equivalent in other obligations, either at once, acknowledged or deferred, provided they are not expressly excepted in this schedule, fees shall be collected in accordance with the following paragraphs:
	For original instruments of contracts the value or amount of which exceeds 6,250 pesetas and is not more than 62,500, 0.80 céntimos per 100.
	For those involving more than 62,500 pesetas up to 156,250 there shall be charged, besides the rate fixed in the foregoing paragraph, 0.40 céntimos per 100 for the excess.
	For those involving an amount greater than 156,250 pesetas up to 312.500, besides the amount fixed in the preceding paragraphs, there shall be charged 0.20 centimos per 100 for the excess.
	For those involving more than 312,500 pesetas to 625,000, besides the rates fixed in the preceding paragraphs, there shall be charged 0.10 céntimos per 100 for the excess.

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Notarial schedules which shall be provisionally in force, etc.—Continued.

No.	ORIGINAL INSTRUMENTS.
	Contracts involving more than 625,000 pesetas shall pay fees as if they did not exceed said amount.
	In these contracts notaries can not collect the fees referred to in number 2 of this schedule.
	The instruments of the declaration of the capital the husband brings in marriage, receipts; lets and sublets, and the articles of partnerships and corporations shall be considered as included in number 1 of this schedule. (Those of No. 1.)
7	In contracts of redemption of annuities (censos), repurchases, loans with a mortgage, pledge, or bond, or without these guarantees, cessions of credits for a consideration, dowries, portions, articles of marriage, with a delivery and gifts *propter nuptias*, three-fourths of the proportionate fees which are fixed in the foregoing number shall be changed.
8	For the application of the scale referred to, the principal involved in the contract shall serve as a regulating figure in the imposition of annuities (censos), obligations, bonds, and constitution of mortgages.
	In sales and awards in payment of debts the amount thereof, minus the annuity charges and others which are not purely mortgage charges.
	In the redemption of annuities (censos) and cession of credits, the principal for which the latter are created and the former redeemed.
	And in exchanges, the estate having the highest value.
9	For instruments of public services for the State the following fees shall be charged: In contracts up to 62,500 pesetas, 50 pesetas. When they exceed said sum up to 625,000 pesetas, there shall also be collected 0.50 céntimos for every 625 pesetas in excess. From 625,000 pesetas and over, nothing shall be collected for the excess.
10	In bills of sale of property and rights of the State and those of the redemption of annuities (censos) there shall for the present be charged one-half of the proportionate fees, according to the rules prescribed in the foregoing number.
11	When the instruments or contracts are executed outside the office of the notary within the town of his residence, besides the fees corresponding to the respective instrument, he shall charge the following ones, according to the classes: In the seat of an audiencia, 10 pesetas. In the seats of inferior courts, 7.50 pesetas. In other localities, 5 pesetas. At night the double shall be charged.
	The case is excepted where the executor is materially incapacitated to execute the instrument in the office of the notary.
	If the latter is forced to leave the town of his residence at the request of an interested party he shall in all cases, without exception, besides the fees due for the instrument or contract he is to authenticate, charge the following: In seats of audiencias, 50 pesetas per day. In seats of inferior courts, 30 pesetas. In other towns, 20 pesetas.
12	For sealed wills and codicils, including the proceedings of opening, 24 pesetas.
	If the sealed will or codicil is deposited with the notary he shall charge 40 pesetas more.
13	Declaration of poverty and copy thereof, including its drafting, when it takes place outside of the office of the notary on account of material incapacity of the person interested, 10 pesetas.
14	For general powers for suit, 10 pesetas.
15	Memoranda of withdrawals, cancellations, extinction of obligations, and other similar ones which must be made at the margin of the original instrument, 2 pesetas.
	COPIES.
16	For each sheet of first, second, or subsequent copies of original instruments issued within the year of their execution, 2 pesetas.
	If they are of other years, he shall charge for each year he is requested to examine 0.25 céntimos extra.
	For the care and preservation for each year of age, 0.25 céntimos.
17	Marginal notes stating that copies have been issued, 1 peseta.
	CERTIFICATIONS AND OTHER NOTARIAL WORK.
18	For each sheet of a certificate relating to any class of documents exhibited for this purpose, 4 pesetas.
19	For each sheet of insertions or literal certificates, 2 pesetas.
20	If the documents exhibited are of the sixteenth and seventeenth centuries, there shall be charged for each sheet of literal copies 3 pesetas.
	For each sheet in abstract, 6 pesetas.
	When they refer to dates prior to the sixteenth century, for each sheet of a literal copy 10 pesetas.
	For each sheet of copies in abstract, 20 pesetas.
21	When a notary is requested to certify to anything outside of his office, he shall earn for each hour engaged: In seats of audiencias, 15 pesetas. In seats of subdistricts, 10 pesetas. In other towns, 5 pesetas.
22	For consultations and opinions regarding professional matters, for each hour: In the seat of an audiencia, 8 pesetas. In other seats of subdistricts, 6 pesetas. In other towns, 4 pesetas.
23	For the authentication of documents, 7.50 pesetas, which notaries shall not collect, being represented by the stamp of the association which must be affixed in accordance with the provisions of the regulations for the execution of the notarial decree-law.

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Notarial schedules which shall be provisionally in force, etc.—Continued.

No.	CERTIFICATIONS AND OTHER NOTARIAL WORK.
	No fees shall be charged for the memoranda required by said authentications or by depositions issued for presentation as evidence.
24	For extrajudicial auctions in which notaries take part at the instance of an interested person, they shall charge for each hour engaged: In seats of audiencias, 15 pesetas. In the other seats of the subdistrict, 10 pesetas. In other towns, 5 pesetas. The memoranda to be made of said auctions shall be gratis.
25	Placing in the protocol judicial records of inventories, partitions and awards of property, for each sheet, 0.31¼.
26	When the placing in the protocol is the result of judicial orders, he shall collect for fees for the latter 5 pesetas.
27	Memorandum of protest of a note or draft with the copy thereof and the proper one according to the commercial provisions, 15 pesetas.
28	Work to be done in order to indicate the document protested, 5 pesetas. To receive payment before sunset the day of the protest, deliver the draft and cancel said protest, the notary shall collect for the first hour engaged 13 pesetas. For each successive one, 10 pesetas.
29	Certificates as to existence, 5 pesetas.
30	Orders for notifications and summons, communications and notices to clerks, and similar work, 4 pesetas.
	ARCHIVES.
31	Literal copies of instruments and other instruments contained in protocols and filed in the general archives or special ones of the notarial offices, when the date of the document is subsequent to the seventeenth century, there shall be charged for each sheet 2 pesetas. When the copy is issued in abstract there shall be charged for each sheet 4 pesetas. If the documents referred to are previous to the seventeenth century, the provisions contained in No. 20 of this schedule shall be observed. (Those of No. 20.) There shall further be charged for the search for each year that it is requested to examine 0.25 céntimos. Per year when the protocols relate to a year prior to the present century, 2 pesetas. Charges for preservation and custody, for each year of age, 0.25 céntimos.
32	If any memorandum is to be made in an archived protocol, there shall be charged, besides the proper fees, according to the foregoing number, 2.50 céntimos.
33	For certified copies of public instruments or documents of the protocol, issued by virtue of a judicial mandate, there shall be charged, besides the fees for search and preservation, for each sheet, those fixed in Nos. 16 and 17. (Those of Nos. 16 and 17.)
34	For comparing copies or certified copies, by virtue of judicial mandates, when it is done in the office of the archives, per hour, 7.50 pesetas.

GENERAL PROVISIONS.

1. The price of the stamped paper is not included in this schedule.

2. The notary archivists shall issue, without charging any fees, and on official stamped paper of the office, or on that of poor persons, according to the cases, and without prejudice to renewing them at the proper time, certified copies and copies of instruments which they must issue at the instance of offices of the State, or at that of persons declared too poor to litigate, it being necessary in the latter case, when proper, that a judicial mandate be issued.

3. Notaries, in making up the account of their fees, shall in every case cite the numbers of the schedule applied.

4. The persons interested may impugn the accounts of notaries.

The oppositions shall be instituted before the proper justice of the peace.

The justice shall decide as he may deem proper, after authority from the notary; and any of the parties interested may appeal from the decision he may render to the judge of first instance of the subdistrict in which the notarial office in question is situated, who, after the same formalities, shall decide without further recourse.

In order to decide the opposition there shall be taken into consideration that the drafting of the instrument must be in accordance with the prescriptions of the regulations for the execution of the notarial law, and the number of 20 lines on the page containing the stamp and

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24 on the other ones shall be considered the average figure for sheets in the registries as well as in the copies and depositions.

5. When a notary charges too much by way of fees, he shall pay, besides the amount he is ordered to return, and provided the judge considers it proper, the same amount again by way of fine, in the proper stamped paper, and in all cases, the expenses caused by said opposition.

6. The application of No. 4 of this schedule shall be understood as suspended until the mortgage law is put into operation, and as a consequence thereof the registry of property.

7. The present schedules have a temporary character only.

8. Without prejudice to the provisions contained in this schedule, private parties are at liberty to stipulate with notaries regarding the amount of fees, provided they are always less than the amounts fixed in the same.

9. All previous provisions relating to notarial fees are hereby repealed.

Madrid, May 16, 1879.

Approved by His Majesty.

ALBACETE.

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APPENDIX II.

Royal order of January, 18, 1885, extending to the Islands of Cuba and Puerto Rico article 76 of the General Notarial Regulations of November 9, 1874, in force in the Peninsula.

YOUR EXCELLENCY: In view of the resolution of the board of directors of the notarial association of Habana, regarding the request of the notaries of Matanzas asking that a series be established for drawing up protocols when the designation of the notaries depends upon the judge or other authorities, in the terms prescribed by article 76 of the general notarial regulations of November 9, 1874, in force in the Peninsula;

In view of the favorable reports of the chamber of administration of the audiencia of Habana, and of the general administration of grace and justice of this department;

Considering that it is just that the distribution of drafting protocols, which are included in the case aforementioned, be made with the greatest equality possible, in order that notaries may all equally enjoy the benefits which may arise therefrom;

His Majesty the King (whom God preserve) has considered it proper to order that the said article 76 of the General Notarial Regulations of November 9, 1874, be extended to the islands of Cuba and Puerto Rico, and which reads as follows:

The placing in protocols of all kinds of acts and contracts prescribed by law corresponds exclusively to notaries.

When by virtue of acts, proceedings, or judicial suits it is necessary to draft an original instrument, the judge or court taking cognizance of the former shall order that it be drafted, authenticated, and filed in the protocol by the licensed notary residing in the town where the court is established, for which purpose the original decisions, certified copies, and data necessary for the compliance with the order shall be furnished him. If the data forwarded is not sufficient the notary may request of the parties interested, or of the judge or court directly, the ones which are lacking to complete the documentation.

The selection of the notaries who have said qualification belongs in the first place to the parties interested; if the designation is not unanimous, there being no harmony in the selection, the judge or court shall appoint the notary whose turn it is, for which purpose he shall transmit the proper communication to the delegate or subdelegate of the notarial district or to the dean of the association, if it should be in the seat of the latter, in order that they may appoint him, and who shall keep the proper book for the purpose. The appointment according to series or by the designation of the parties interested shall appear precisely in the decrees and in the instrument.

When the recording clerk is also a notary, said series may be omitted.

Which I communicate to Your Excellency by royal order for your information and subsequent effects.

May God preserve Your Excellency many years.

Madrid, January 18, 1885.

TEJADA.

To the Director-General of Grace and Justice of this Department.

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APPENDIX III.

Decree of February 25, 1874, ordering that the owners of all classes of alienated public offices authorized to certify, in the territory of the islands of Cuba and Puerto Rico, present, before October 1, 1874, in the secretaries' offices of the respective audiencias, the documents referring to the ownership of the same, and prescribing rules for the classification and declaration of rights.

The organization of notarial offices in the islands of Cuba and Puerto Rico having been radically modified by the law of October 29, 1873, it was just and necessary to fix the bases which should govern the institution of the proceedings for indemnification for the alienated public offices authorized to certify which, by virtue of a final precept, must unavoidably be reincorporated into the State.

There is no doubt that the decree of the same date, published in the *Gaceta* of the 5th of the following November, filled this requirement, and with an activity worthy of applause; but, taking into consideration the system in contempt of law in force in the provinces of Cuba and Puerto Rico, and which determined all that related to alienated offices, and the undersigned secretary being of the opinion, on the other hand, that it would not be useless to the interests of the State to demand any data which might conduce to the indispensable clearness in the reigning chaos, he considers it advisable not only to somewhat enlarge the legal requirements of the said decree, but also to give greater scope to its provisions, in order to avoid by this means that the action of the chambers of administration of the respective audiencias, ceding, perhaps, to a conciseness which does not look very far into the future, be one day paralyzed, either by the lack of concrete legislation to which to adhere, or the insufficiency of the ideas, or of the lack of sufficient authority and powers to demand the documents which might be required for an elucidation of the numerous doubts which will surely arise.

Therefore, on account of the privileges which up to the present time the ownership of alienated offices carried with it in Cuba and Puerto Rico, acknowledging the confusion which with marked insistence used to arise in the discrimination and exercise of determined functions, and in view also of the complication involved in the different measures which were issued on the subject and which were in constant conflict with the neglect of an exact fulfillment, the undersigned secretary does not consider as sufficient for a good administrative management and for the necessary dignity of the law the presentation of only the documents prescribed by article 2 of the decree cited, of October 29, 1873, but, on the contrary, he firmly believes that all of those should be demanded which, in order to avoid doubts, tend honestly and loyally to a complete justification of the law of ownership and of the nature, character, and existence of alienated offices.

And if these are the ideas of the secretary in a matter which, up to the present time, involved old and special proceedings and privileges ordinarily but little known; if, in the march of modern progress, he

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directs his efforts to energetically avoid the transgression of laws and the usurpation of rights; if, finally, he must not forget that so delicate a question may directly affect the brilliancy and splendor which it has been decided to give notarial offices in the colonial provinces, it is evident that he can not accept the final periods of time prescribed by article 3 of said decree in ordering that chambers of administration of audiencias shall definitely decide proceedings for indemnification within the period of three months, and by this department within a month, which can not be extended, computed from the date on which the papers in the case were received by the same.

The contents of this provision are not only in conflict with the unforeseen requirements which are constantly arising and also against the wishes of the undersigned secretary, but, speaking logically, are almost impossible. To demonstrate this fact it is sufficient to remember the considerable number of proceedings which will have to be instituted for the purpose, the delicacy of their examination, the errors capable of correction which they may contain, the new data which may be demanded, and the necessity of hearing, on more than one occasion, the honored opinion of the council of state or of any of its departments.

And if to this may be added, from a practical standpoint, that there are in the Peninsula suits which, in accordance with the notarial law of 1862, have not as yet, for good reasons, arrived at a final settlement, they will evidently demonstrate the uselessness of further efforts on the part of the undersigned to still more justify his opinion in this matter, which has been thoroughly considered.

Based on these remarks, therefore, the undersigned secretary has the honor to submit to the approval of the council of secretaries the following draft of a decree.

Madrid, February 25, 1874.

VICTOR BALAGUER,
Colonial Secretary.

DECREE.

The Government of the Republic, at a meeting of the council of secretaries and at the instance of the colonial secretary, decreed the following:

ARTICLE 1. The owners of all kinds of alienated public offices authorized to certify in the territory of the islands of Cuba and Puerto Rico shall present, before October 1, 1874, in the secretaries' offices of the proper audiencias, the documents referring to the ownership of the same, for their proper classification and the declaration of rights.

ART. 2. The documents or instruments the presentation of which is indispensable, are the last one of the acquisition of ownership in favor of the actual possessor, the one of the previous owner, those which prove the payment of the proper fees and taxes, as well as the existence or freedom from incumbrances, and any others which tend to justify the validity of the offices; all without prejudice to the ones which the chambers of administration may consider it useful or necessary to demand at any time, and according to the cases, in order to duly justify the right of ownership in an incontrovertible manner, and the nature, character, and legal assistance of the former.

The originals of these documents or compared certified copies may be presented.

ART. 3. In view of the documents presented and the other ones it may be considered advisable to demand, the chambers of administra-

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tion of audiencias shall make the proper classification of the offices and of the rights of the owners of the same and shall forward the proceedings to the colonial department for a definite decision and a declaration of the right to indemnification.

ART. 4. All alienated public offices which at the time of the putting into operation of the notarial law in Cuba and Puerto Rico are vacant, shall be at once considered as having reverted to the State after indemnification, as well as those which become vacant in the future through the death or cessation of the persons who actually discharge the functions derived from the original titles or certificates of ownership.

ART. 5. The amount of the indemnification shall be satisfied when the material reincorporation into the State is effected—that is, when the vacancy is at the free disposition of the Government; but neither one nor the other shall be effective unless the office in question has been previously classified as admissible and with right to indemnification.

ART. 6. In consequence thereof the appointments made and approved of prior to the putting into operation of the aforesaid law, and which are a matter of private right of ownership, shall have their legal effects in accordance with the prescriptions of the same, and particularly with regard to the provisions contained in the temporary ones of the said law and of the general regulations for its execution.

ART. 7. Without prejudice to what has been ordered, the chambers of administration of audiencias shall see, now and at all times, that possessors of offices for one life only prove their existence in the ordinary form by means of the proper certificates; not neglecting, as soon as the death of any of them occurs, to institute the proper proceedings and declare the extinction of the office, immediately submitting a report in writing to the colonial department for the proper approval.

ART. 8. In the same manner the chambers of administration shall take care to state with clearness and preciseness in all proceedings relating to indemnifications for alienated offices, whose owners do not personally discharge the duties thereof, who may be the appointed managers, and by virtue of what title they exercise and are to continue exercising the functions of their office until it is rendered vacant by death or legal cessation.

ART. 9. From April 1, proximo, on which date the new notarial law is to go into operation, the exercise of each and every one of the prerogatives which the ownership of alienated offices authorized to certify carried with it, is prohibited in the islands of Cuba and Puerto Rico.

ART. 10. The owners of said offices who do not make use of the privilege granted them by article 1 of this decree within the limit of time fixed therein, shall lose all right to indemnification, and the colonial department, at the instance of the respective chamber of administration, shall, at the proper time, decree its due reincorporation into the State.

ART. 11. In cases of doubt, lack of written evidence, or of acknowledged abuses, the Government shall decide, hearing the council of State or one of its departments, and leaving to the interested parties the legal remedies which they may deem it advisable to make use of.

ART. 12. The colonial secretary shall, at the proper time, demand of the Cortes the suitable credit in order to pay the indemnifications which may be legally granted.

ART. 13. It is incumbent upon the said colonial secretary to issue all rules and interpretations which may be necessary for a faithful compliance with the prescriptions of this decree.

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ART. 14. The decree of October 29, 1873, published in the *Gaceta* of the 5th of the following November, is hereby repealed, in so far as it conflicts with the provisions of the present one.

Madrid, February 25, 1874.

FRANCISCO SERRANO,
President of the Executive Power of the Republic.
VICTOR BALAGUER,
Colonial Secretary.

The first one of the provisions contained in the order of the President of the Executive Power of the Republic, of December 15, 1874, and which follows, is a further explanation of the foregoing decree:

In stating in the preamble of the notarial decree-law that if the modifications it involved contained any defect time would make them evident in order to correct them at the proper time; and the general regulations for the execution of the same, delegating to the Government the duty of deciding any questions and consultations which might arise, observed great prudence, it being known that such delicate matters like alienated offices would naturally require, although without conflicting with the provisions of the law, either an interpretation of some of the provisions of the regulations or their modification or reform, and always a certain amount of discretion which, for exceptional cases and with regard to said provisions, was from the beginning indisputable.

The Government being authorized by the third temporary provision of the aforesaid regulations to immediately issue the proper rules relating to the classification of the alienated offices authorized to certify and to the declaration of rights of the owners and of the payment of the respective indemnification, said privilege was in part taken advantage of by means of the decree of February 25 of the present year, in which, notwithstanding that rules are established for the institution of the proceedings which, by virtue thereof, may arise, the lack of the amount of the indemnifications has, however, been observed; a lack which will naturally affect such proceedings by making their conclusion more difficult, and on the other hand accuses of a noncompliance with the aforesaid temporary provision in the part prescribing that the rules which may be adopted on the subject, be in harmony and not subject to provisions, also temporary, Nos. 3 and 4 of the law of May 28, 1862; provisions which are precisely the ones which concretely treat of the point in question, and without the previous declaration and clear knowledge of which it is not possible to arrive at a necessary and final decision regarding the rights involved.

Therefore, if the interpretations which lead to this point will avoid unnecessary expense on the part of the persons interested, as well as slow and undeterminate proceedings, it would be just to acknowledge that measures tending to define the rights which by reason of their origin and specialty must necessarily differ in the means, proceedings, and manner of making them effective, from the general principle established, will not be without result nor less beneficial.

And, further, if besides the alienated offices authorized to certify conferred in perpetuity; if besides that absolute ownership to which the said provisions refer, there exist also, although lamentably ignored by all legislation on the question, offices conferred for one life only, which are only to last during the lifetime of their legitimate possessors; and if the notarial decree-law for the islands of Cuba and Puerto Rico not

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only respects them in the discharge of their office for this entire period, which is the only obligation of the State, but also exalts them, elevating their functions and profession to the height demanded by modern times, relieving them of the new demands of science and investing them with a prestige and security they have not heretofore had, it is evident that there is no reason for indemnification, nor that any right whatsoever has been violated.

Notwithstanding this, the colonial secretary does not wish to absolutely bar steps being taken to institute the remedies which it may be desired to make use of, nor to repulse any means for claims; but he is under the necessity, which can not be prescinded from, to avoid future confusion and artful claims, by determining how and in what manner this matter must be proceeded with and by facilitating the means of arriving at a definite decision in each and every one of such cases. And this is so logical and foresightful that the injury or damage which is supposed to have been caused apparently does not result from the proceedings, their computation, the concrete claim of the persons interested, and the justification of the alleged facts, and nothing could be decided by the colonial secretary, either with regard to the right nor to the amount of the indemnification.

Nor is the advisability of explaining the provisions of article 10 of the notarial decree-law ignored by the Government. To be a notary said article requires, among other conditions, to have pursued the studies and complied with the other requisites prescribed by the laws and regulations, or to be a lawyer. It was natural that these studies, as was done for the Peninsula, should be specified in the regulations; and notwithstanding article 5 of the same, which treats of this question, limits itself to prescribing that for the office of notary, besides the qualifications prescribed by the said article 10, it was necessary not to have any permanent physical impediment or defect for the duties thereof.

A distinguished commentator on this question, in treating of the aforesaid article 10, understands without admission of doubt that the studies required are the academical ones prescribed by law for the notarial profession; but the law in question having been written for application in the colonies, where at the time of its publication no academical degrees were required for said profession, and although it is true that in the University of Habana all notarial degrees are conferred, it is also true that said institution is governed by a special plan of studies different from that of the Peninsula, therefore, to avoid justified doubts, it is considered necessary to state that the studies referred to in article 10 of the decree-law are those which constitute the notarial profession in the University of Cuba, according to the plan of studies in force or which may in the future be adopted, but without this being an obstacle to the full right of admission of the persons who prove, in accordance with the laws of the Peninsula, that they have passed the same in the universities of the latter.

But notwithstanding this facility of means which was in justice due the loyal sons of the colonies, it is more than possible that in view of the indifference with which the creation of said profession was received in the islands, the very small number of alumni who took the degrees thereof, according to official data, and the distance which separates the territory of Puerto Rico, where said course of studies does not exist, involves at first the natural inconvenience of a lack of applicants, not only sufficient to fill the same, but also in sufficient number to arouse interest, to give character to the competitive examinations, and to facil-

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itate the selection of an apt and competent personnel for the discharge of so difficult as well as noble a mission which the law intrusts to them. A competitive examination searches, no doubt, for the demonstration of the greatest number of acquirements, and if there are no competitors nor rivals over whom to triumph, it is logical to say that it will fail of its principal object and will not fulfill the purpose for which it is instituted.

Taking these facts into consideration, the colonial secretary, considering the capacity which will be required in the future on account of the importance of a notarial office, and in view of the reasons set forth, aside from other ones of equal importance, considers the amendment of the first part of article 9 of the Regulations for the Execution of the Notarial Law in those Islands of general utility in such manner that the competitive examination which is held according thereto in the seat of the association to which the notarial office corresponds, be subdivided among those provinces and the Peninsula, said examination being held without change and exactly in accordance with the series originally established, in the respective seat, in accordance with the prescriptions, and another in the Peninsula through the superior court established at Madrid.

This decision embraces also the same regulations in question, in so far as they treat of the competition for promotion series, declaring the same common to the Peninsula and to the islands of Cuba and Puerto Rico, without it thereby being possible to censure that a similar principle be applied to the remaining competitive examination series.

In view of all these considerations, the President of the Executive Power, in accordance with the suggestion of the department, and hearing the opinion of the council of state in full, has adopted the following provisions:

1. The owners of offices authorized to certify, conveyed or conferred with the clause of reversion to the State for the price of egression or other fixed sum, shall be indemnified in accordance with said clause.

Other owners of said alienated offices shall receive by way of indemnification, first, the amount of the egression and confirmation; second, the amount which appears to have been satisfied in addition.

The persons interested shall, when the proceedings are instituted, formulate the proper, clear, and concrete claim regarding the right they exercise in accordance with the foregoing provisions, duly proving in the same the exactness of the facts alleged and the case or cases applicable to the indemnification.

2. The possessors of offices for one life only do not have a right to any indemnification whatsoever.

Without prejudice to the provisions of the foregoing paragraph, if said possessors consider themselves injured in any manner, they may institute the proper proceedings for indemnification, in which they shall state their motives and reasons, the amount they claim by virtue thereof, and the proper legal justification regarding the existence of the same, and the appraised valuation.

The Government shall decide as may be proper, previously hearing the proper department of the council of State.

3. The studies referred to in article 10 of the decree-law of October 29, 1873, are understood to be the ones which constitute the notarial course in the universities of Cuba, according to the plan of studies in force or which may in the future be adopted; but without this being an obstacle to the full right of admission of the persons who are eligible, in accordance with the laws of the Peninsula, for having pursued the same in the universities thereof.

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4. The competitive examination series referred to in article 9 of the regulations for the execution of the notarial law shall be subdivided, without changing the same, between the Peninsula and the Islands of Cuba and Puerto Rico, said examination being held once in the capital of the territory where the vacancy has occurred, and another time at Madrid, or what is the same thing, for the vacancies corresponding to the same series, alternately in Madrid and the seat of the respective Colonial Notarial Association.

All of which I communicate to Your Excellency by order of the President of the Executive Power, for its application, observance, and fulfillment.

Madrid, December 15, 1874.—ANTONIO ROMERO ORTÍZ.

To the Governor-General of ———.

To the Presiding Judge of the Audiencia of ———.

The royal decree of April 12, 1878, further explains at the same time the provisions contained in the foregoing decree and order, which is as follows:

ARTICLE 1. The owners of alienated public offices conferred in perpetuity in the islands of Cuba and Puerto Rico who renounce, in due form, the indemnification treated of in the decree of February 25, 1874, and the circular order of December 15 of the same year, shall have a right to presentation in person or of a third party for once only for the notarial offices which take the place of their offices in the same towns or districts, provided the nominee has the qualifications prescribed by article 10 of the law, and article 5 of the regulations of October 29, 1873.

The nominee shall not be subjected to a competitive examination, but will have to prove, in an examination held before the audiencia of the territory, that he possesses the knowledge required by article 11 of the said regulations.

ART. 2. If the owner of the office or the person nominated to fill the same does not possess the required conditions, or does not pass the examination, a new candidate may be nominated.

Finally, with regard to the owners of the abolished "Anotadurías" of mortgages of Cuba and Puerto Rico, which, under the title of "Notaries of the Indies," issued certifications, a royal decree was issued on February 9, 1883.

It is as follows:

At the suggestion of the colonial secretary, in accordance with the opinion of the colonial, state, and grace and justice departments of the council of state—

I decree the following:

ARTICLE 1. The owners of the abolished anotadurías of mortgages in the islands of Cuba and Puerto Rico, who, under the title of notaries of the Indies, were issuing certifications with their own protocol by virtue of the law of March 3, 1873, may continue to discharge said duties after renouncing the right to indemnification granted them by the royal decrees of February 28 and June 27, 1873.

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ART. 2. The owners of the offices mentioned in the foregoing article, who are only recorders (anotadores) and to whom the right to an indemnification is granted, may apply for nomination for their own benefit or for that of another person for once only for the notarial offices of the same towns or districts or for others of the same or of a lower class, which are vacant and are to be filled, in accordance with what is prescribed by article 11 of the royal decree of September 30, 1875.

The suppressed *anotadurías* which are united with another alienated office shall not be considered included in the preceding rules, as they have no right to an independent indemnification; their owners shall only be indemnified for the principal office with its annexes, in accordance with the general provisions regarding the reversion of alienated offices.

ART. 3. The person nominated, in accordance with the first paragraph of the foregoing article, shall be relieved from proving the income and from entering the notarial profession through a competitive examination; but he will have to prove that he possesses the conditions prescribed by articles 10 of the law and 5 of the regulations of October 29, 1873, and in an examination before the audiencia of the territory that he possesses the knowledge required by article 11 of the said regulations.

ART. 4. If the nominee does not possess the conditions required, or should not pass the examination, a new candidate may be nominated.

ART. 5. After a notarial office has been declared vacant, there shall be announced in the *Gacetas* of Habana and Puerto Rico that it is to be filled, in order that the owners of alienated offices who desire to make use of the right of nomination granted in the royal decree of April 12, 1878, and in article 2 of the present one, may address their written applications to the presiding judge of the proper audiencia within the period of thirty days, counted from the day following the publication of the announcement.

The applications shall be forwarded to the colonial secretary through the presiding judges of the audiencias after the classification of the applicants has been made by the chambers of administration, in accordance with the provisions of the following article:

ART. 6. When there are two or more applicants the following order of preference shall be observed:

First. The owner of an office authorized to certify, conferred in perpetuity, which is situated in the same town of the notarial office to be filled.

Second. The owner of an office as recorder (anotador) of mortgages of said town.

Third. The owner of an office of either of the two classes mentioned, situated in another town.

When there are two or more of the same class, the owner of the office having the highest value shall be preferred.

ART. 7. Should there not be an applicant who is the owner of an alienated public office who has a right thereto, in accordance with the provisions of this decree, it shall be filled according to the proper order of succession, in conformity with the prescriptions of article 8 of the notarial regulations.

Issued at the Palace on February 9, 1883.

ALFONSO.
GASPAR NÚÑEZ DE ARCE,
Secretary for the Colonies.

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APPENDIX IV.

Royal decree of November 14, 1885, creating a registry for last wills and testaments.

SIR: The honorable jurists who drafted the original mortgage law, respecting the general principle that instruments not recorded should not prejudice third persons, so stated it in an absolute manner in article 23, with the object of securing the development of land credit, and even at the risk of injuring, in certain cases, the most just rights.

The difficulty of its establishment and the work entailed by its practical application were consequences of the radicalism of such a prescription, suspensions and extensions to declare it in force having taken place, and the necessity to except from said general principle the record of instruments of inheritance or legacies is acknowledged through "the impossibility to legally prove that a will which is presented as a title to secure a record is not repealed by a prior one, drafted with a clause of annullment, having been revoked by the testator;" and the modification of article 23 of the law of 1869 was founded thereon, it being complemented by the paragraph establishing that the record of property acquired by inheritance or legacy does not prejudice a third person until after five years from the date of the record have passed.

The right of persons who were really entitled to an inheritance was, by said addition, protected, but not without detriment to land credit, as during said period a record could not inspire the confidence necessary to attract capital to real estate acquired by inheritance.

This gave rise to a third paragraph being added to the same article by a law of July 17, 1877, and according to which the record of property acquired by legal heirs prejudices third persons from its date, should there be a will or not.

Such important changes and repeated vacillations in one of the fundamental bases of the law attracted the attention of the Government of Your Majesty, and the undersigned secretary, desirous of conciliating, in so far as practicable, the development of land credit with the due respect of the said rights, has considered himself able to do something toward this end, although without attempting the legal modification of our mortgage system, by creating a general registry for all last wills executed in Spanish territory, and even abroad before our consular agents.

Being established in a convenient manner, it will give persons who believe that they have a right to or are in hopes of an inheritance, a notice of said wills with regard to a certain person; it will avoid that property be recorded by virtue of titles which, although good, should not have any legal efficacy by the said will of the testator; it will lessen the probabilities which exist at the present time of declaring heirs *ab intestato* when there are heirs by will; and, finally, it will give the public who desire to invest capital in real estate acquired by inheritance more sources from which to ascertain, in so far as practicable, what is of greatest interest to it—that is, whether the contract executed with the person who appears to be the owner according to the registry will be exposed or not to its invalidation within the period of five years.

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The project requires that the greatest secrecy regarding wills recorded during the lifetime of the testator be observed, but as soon as his death has been proved the registry is made public, as no prejudice can result from their being made known; the persons interested are obligated before obtaining a declaration of heirship *ab intestato* or the judicial approval of partitions made by virtue of a will, to present in the proper inferior court a certificate stating the wills which may have been recorded relating to the testator; notaries are prohibited from authenticating instruments of award or partition, if this certificate is not presented to them, and, finally, in order that the registry, the creation of which is proposed, may have its principal effect, registers are required to state the contents of the certificate in the record.

In this manner, without introducing any modification whatsoever in the civil law, without attempting to know the will of the testator, without adding formalities to those which are to-day required to validate instruments in which the disposition of property after death is ordered, and without altering the prescriptions of article 23 of the mortgage law, the undersigned secretary believes that third persons will be granted greater security, as even during the five years the effects of the record are to be suspended, they do not run the risk of being despoiled by heirs having a better right.

And this will not be the only advantage of the project, if it meets with the approval of Your Majesty. The registry once established, judges and courts will have a new source from which to ascertain the existence of last wills, with regard to the falsity of which litigation arises.

The basis and the authorized precedent of this registry are the ones which are kept with beneficial results in various provinces, due to the initiative and zeal of their notarial associations, some of which the undersigned secretary has had occasion to examine personally, this valuable experience causing him to generalize on the subject. The present reform is nothing more than the beginning of a service which at some future time will require development by legal precepts of greater scope; but it is of importance to establish it immediately in order that the benefits thereof may accrue and be fully utilized in the definite reforms to which our civil law must be subjected at a period which, depending upon the patriotism of all parties to assist in this national work, is believed to be not far distant.

Based on these considerations and after having heard the opinion of the chambers of administration of the audiencias, that of the boards of directors of the notarial associations, and that of the board of officers of the registry division, all of which agree to the usefulness of the institution, the undersigned secretary, in accordance with the council of secretaries, has the honor to submit the annexed draft of a decree for the approval of Your Majesty.

Madrid, November 14, 1885.

Sir, at the royal feet of Your Majesty,

FRANCISCO SILVELA.

ROYAL DECREE.

In conformity with the suggestion of the secretary of grace and justice, in accordance with the opinion of the council of secretaries,

I decree the following:

ARTICLE 1. From January 1, 1886, there shall be kept a general registry of wills in the general administration of civil registries and those of property and of notaries.

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The private registries which shall also be kept in each one of the offices of the deans of the notarial associations of Spain and the colonies, as well as the data furnished by the consular agents abroad, shall serve as a basis for the general registry.

ART. 2. The general registry shall contain—

(*a*) Open or sealed wills, codicils, powers to bequeath, revocations, retractions of the latter, gifts *causa mortis*, declarations of poverty in which property which may be acquired in the future is disposed of, and in general all instruments relative to the expression or modification of last wills in which a notary assists, either of the Peninsula, adjacent islands, or colonies, or a parish priest at places where, according to law, right, or custom, he assists as certifier, or a consular agent abroad.

(*b*) The declarations made by judges to the effect that the instruments presented to them for this purpose are wills or the depositions of witnesses in a proper case, and of the decrees issued ordering that testamentary memorials be included in protocols.

(*c*) Final judgments which affect the validity of testaments and other acts of last will.

ART. 3. The general registry, as well as the private ones, shall be kept on sheets which contain the following printed columns: First, names and surnames of the testators; second, their character; third, residence or domicile; fourth, status (whether married or single); fifth, names and surnames of their parents; sixth, notary or official who authenticated the instrument, or the judge who made the declaration or issued the decree, and clerk who officiated; seventh, town in which it took place; eighth, date; ninth, character of the last will; tenth, remarks.

ART. 4. The general registry and the private ones of each notarial association shall be secret, under the liability of the personnel in this service in the administration and offices of deans of notarial associations.

Certificates may only be issued in accordance with the contents of the general registry in the following cases: First, when they are requested by judges or superior courts or officials for business of the service; second, when the principals themselves request them, proving their identity; third, when they are requested by any person, if he proves with an authentic document the death of the person of whom it is desired to ascertain whether any last will has been recorded or when said death is already known.

The certificates shall be issued by the chief of the bureau, countersigned by the director, on the proper stamped paper, which shall be furnished by the petitioners, who shall pay 1 peseta for each certificate as fees. These amounts shall be destined to cover the expenses of this service until, they and the income having been ascertained, either may be included in the budgets of the State.

The proper draft of all certificates issued, authenticated with the rubric of the director and surname of the clerk, shall be filed.

ART. 5. Parish priests, judges of first instance, and notaries of the Peninsula, adjacent islands, and the colonies, who in any manner whatsoever take part in the executions or declarations mentioned in article 2, shall direct a communication within the third day, computed from the date of the execution or declaration, to the dean of the respective notarial association, in which, in separate and numbered paragraphs, the data mentioned in article 3 shall be included. In case all of them can not be stated, they shall state that the ones included are the only ones they have been able to obtain.

The consular agents of Spain abroad shall forward to the general

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administration the communication referred to in the preceding paragraph. The administration shall issue printed forms for the communications.

As soon as notaries forward the communication, they shall state this fact by means of a memorandum at the margin of the respective instrument, collecting 1 peseta therefor, which must be paid by the party interested. Half of the fees collected by the notaries in this manner shall be credited to the treasury of the respective notarial association, being destined, in so far as necessary, to defray the expenses caused by this new service.

ART. 6. Deans of notarial associations, immediately upon receiving the communications referred to in the preceding article, shall order that the data be entered in the private registry to be kept in the office of the dean. The private registry of each territory shall be kept according to alphabetical order of surnames, on sheets containing columns of common paper, which shall be bound annually, the manner of conducting this service being in charge of the respective boards.

The administration shall issue to the same the necessary sheets, also of common paper, so that in the proper columns there may be entered, in alphabetical order of surnames, the data contained in the communications, entire sheets being assigned to each letter of the alphabet.

ART. 7. On the 1st and 16th of every month the deans of the notarial associations of the Peninsula and Balearic Islands shall forward to the direction such sheets which are entirely filled, stating in the communication the number they forward, the number begun, and the entries contained on each one of the latter, with a statement of the letter to which they correspond.

If, on the day the transmission is to be made, there should not be any sheets which have been completely filled, corresponding to one letter, said transmission shall be deferred until the following one, on which day it shall be made, although no sheet has been filled.

The direction shall form the general registry with the sheets which are forwarded by the deans of the notarial associations and with the data furnished by the consular agents, which must also be contained on full sheets, one for each letter. There shall, moreover, be kept a strict alphabetical index to facilitate the search for entries in the general registry.

The deans of notarial associations of the Canary Islands and the colonies shall forward their sheets every month in the same manner.

Consular agents shall forward the proper communication within the same period of one month.

ART. 8. Whenever a declaration is requested that a person has died *ab intestato* or the judicial approval of partitions made by virtue of any last will, there shall be presented in the proper court of first instance a certificate of the direction stating those which appear recorded or that none made by the testator appears recorded.

The certificate shall be attached to the decrees, and, without prejudice to the judge deciding what he may deem proper, he shall observe in making the declaration of death *ab intestato* or in approving the partitions that the contents of the certificate are entered.

ART. 9. Notaries who are requested to certify to instruments of awards or partitions of property acquired by testate inheritance shall require the persons interested to present to them a certificate of the direction stating whether there appears recorded or not any other last will of the principal. The certificate shall be attached to the original instrument and shall be included in the copies which may be issued.

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ART. 10. Registers of property shall briefly state in the record the property acquired by testate or intestate inheritance, the contents of the certificate of the direction, and shall suspend it for a defect capable of correction if the latter is not included in the instrument or in the decree of declaration or in the judicial approval.

ART. 11. The general division of registries and notaries shall exercise a general inspection of this service and shall administratively correct any errors which may be corrected by the officials in charge of the same.

TEMPORARY PROVISION.

The proper rules for the execution of this royal decree by the officials upon whom its fulfillment is incumbent, shall be issued by the state, grace and justice, and colonial departments.

Issued at Pardo on November 14, 1885.

ALFONSO.

FRANCISCO SILVELA,
Secretary of Grace and Justice.

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APPENDIX V.

Royal decree of March 7, 1893, modifying the notarial demarcation of the Island of Cuba.

COLONIAL DEPARTMENT.

INTRODUCTION.

MADAM: The royal decree of September 30, 1875, fixed the notarial demarcation of the Island of Cuba, establishing 66 notarial offices in the territory of the audiencia of Habana and 26 in that of the audiencia of Santiago de Cuba; that is, a total of 92 notarial offices in the entire island.

The numerous changes effected since that date in the judicial division of the island, to which the notarial demarcation should subordinate itself, and the consideration that in a few years the movement of contracts has changed, induced the general administration of grace and justice of this department to institute proceedings to change said notarial demarcation, and having requested the data required by the notarial law of October 29, 1873, the treasury and colonial departments of the council of state were consulted.

All the reports agree that the actual notarial demarcation of the island requires an immediate modification. In changing the judicial division no provision stated what notarial offices were to be under the jurisdiction of the new courts, and a large number of notarial offices have been vacant for some time on account of a lack of applicants, notwithstanding several calls and the reduction of the sureties, it being evident that the requirements of contracts have varied in a radical manner in many localities since the rather distant date of said demarcation.

The difference of opinion among the bureaus which have issued their reports are not numerous nor of importance. With regard to the territories of the Audiencias of Habana and Matanzas, the chamber of administration of the former and the Notarial Association differ only with regard to the notarial offices of Nueva Paz, La Esperanza, and Ceja de Pablo, the retention of which is suggested by the chamber and the bureau of administration of grace and justice, the association and the treasury and colonial division suggesting that it be abolished.

With regard to the notarial offices of Havana, the audiencia and the association believe that their number should be reduced to 12, while the said direction, the dean of the judges, and the treasury and colonial divisions of the council of state that a change from the actual number of 20 would not be proper, because the public will be better served by said number without detriment to the appropriate living of the notaries, taking into consideration the population and the number of instruments executed. It appears from the data collected in the proceedings that at the present time from 10,000 to 12,000 instruments are executed

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in said capital per year, which makes an average of 500 to 600 instruments for each one of the 20 notaries; and comparing the population of Habana, which, according to the last census of 1887, amounted to 200,448 inhabitants, with that of the more important cities of the Peninsula, such as Barcelona, Seville, Valencia, and Madrid, it appears that 20 notaries in the capital of the island correspond to one notarial office for every 10,000 inhabitants, while Barcelona has one for every 5,700, Seville one for every 7,500, and Valencia one for every 9,400; and therefore, by fixing the number of 20 for the capital of the island, the notaries will be benefited.

It does not appear that the decrease in contracts has markedly affected Habana, an important diminution having been made in the public offices authorized to certify, when the 44 which previously existed were reduced to the 20 actual notarial offices. Statistics of fees are lacking, and, taking into consideration all that the data collected suggests, it would be most prudent not to change the actual number of 20 notarial offices in Habana and immediately abolish those of Nueva Paz, Esperanza, and Ceja de Pablo.

With relation to the territory of the audiencia of Santiago de Cuba, there is no doubt that the opinion of the direction and the proper department of the council of state should be observed, which is against the abolition of the notarial office of Bayamo, suggested by the notarial association, as there is no other one in the district of the inferior court; it is not advisable to create the notarial office suggested by the chamber of administration, in Mayarí, because, as the association states, there do not as yet exist there the elements for the appropriate living of a notary, who may perhaps establish himself when the central plantations situated on the bay of Nipe develop; it is necessary to suppress the notarial offices of El Cobre, Caney, Sagua de Tánamo, Las Tunas, Jiguaní, and Nuevitas, which lack applicants at all calls, because the emoluments of the same are not sufficient to defray the expenses of their holders; those of Morón and Ciego de Avila can be united into one, which will be sufficient to attend to the service and which will constitute a fair income for the official who may take charge thereof, and, finally, it is proper to reduce the notarial offices of Puerto Principe to four, the same number existing in Santiago de Cuba, a town of more importance and wealth.

In modifying the notarial demarcation, the undersigned secretary has deemed it proper to attach thereto the complementary provisions tending to facilitate its quicker and more efficient establishment, prescribing the rules to which the filling of notarial offices are to be subject, which will improve the public service and elevate the notarial class still more. This was done in the Peninsula at the time the royal decrees of demarcation of November 9, 1874, January 20, 1881, and June 2, 1889, were published, and it is still more convenient to follow this procedure in modifying that of the island of Cuba, on account of the existing reason to combine and harmonize the prescriptions which for said filling are contained in article 12 of the notarial law and article 8 of the regulations issued for its execution, with the provisions of the royal decrees of April 12, 1878, and February 9, 1883, which permitted owners of alienated offices authorized to certify and recorders of mortgages who renounced to the indemnification, the rights to have themselves or another person nominated, for once only, to fill the notarial offices which took the place of their offices in the same town, or to apply for the vacancies.

These provisions, however proper they were, tended to abolish and fill,

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little by little, the large number of alienated offices which exist in the islands of Cuba and Puerto Rico, without burdening the public treasury; but applied according to the general interpretation which was given them, they retarded the filling of notarial offices in the manner which the notarial law established; that is, by competition for promotion, or competitive examination, whenever according to the provisions of article 7 of the last cited royal decree, only in cases when no owner of an alienated office requests the vacancy, is when they may be filled according to the proper series established by article 8 of the said law.

In consequence of this provision it has become exceedingly difficult for notaries to rise or obtain promotion in their respective category, depriving them of a hope which they may justly entertain.

It is advisable, therefore, as suggested by the treasury and colonial departments of the council of state, that without injuring nor depreciating in the least the rights of the owners of alienated offices, by reestablishing in the temporary provisions of this decree the spirit and letter of the royal decrees of April 12, 1878, and February 9, 1883, always giving preference to the owners of alienated public offices authorized to certify and to recorders (anotadores) of mortgages, during the time said offices exist in Cuba and Puerto Rico, to choose the vacant notarial offices by means of their nominees, to perfect the rules for promotion and transfers of practicing notaries, applying to the island of Cuba the third provision of article 12 of the notarial law for the Philippines, which admits the series of competitive examinations as suppletory only and when the notarial offices are not requested by said notaries, ordering that the examinations be alternately held for each vacancy, once in the islands and the other time in Madrid, in order to permit natives of the Peninsula as well as those of the islands to enter the profession.

In observance of the provisions of the royal decree of August 23, 1891, drafted by the department of grace and justice, which permitted colonial notaries in certain cases to choose vacant notarial offices of the Peninsula in competition with those who practice in the latter, the annexed decree orders that notaries of the Peninsula may also choose in the series of competition for promotion, together with those of Cuba, Puerto Rico, and the Philippines, limiting transfers to those of Cuba only. In this manner, without prejudice whatsoever to the latter, but rather granting them new guaranties for rise and promotion, the reciprocity which must exist for the filling of notarial offices between the Peninsula and the colonial provinces is retained.

The great importance which the notarial institution has acquired, demands of the persons who are to discharge the duties thereof the greatest conditions of aptitude possible—the several acquirements necessary by virtue of the diversity and variety of modern contracting. For this reason the competitive examinations are enlarged by extending the subjects they are to include, besides those required by article 11 of the regulations in force, to the studies of commercial, penal, administrative, and private international law, legislation on stamped paper, and the tax on property rights and transfers of property in harmony with the prescriptions for competitive examinations to fill notarial offices of the Peninsula and the Philippines.

It is necessary to introduce in the decree some rule for the election of the boards of directors of the notarial associations of Matanzas and Santiago de Cuba, which would be impracticable if said boards are to be composed of notaries who reside exactly in the seats thereof, as provided by article 98 of the Notarial Regulations, article 97 prescribing

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that boards must be composed of 5 members, and the demarcation assigning 4 notaries only to each one of said seats. But this difficulty is not a new one in notarial legislation; the same thing occurs in the seats of associations like Albacete, Cáceres, Las Palmas, and Oviedo; and it is solved in the same manner as was decided for the Peninsula in article 15 of the royal decree of January 20, 1881, and for Puerto Rico in article 8 of the one of March 8, 1883; that is to say, authorizing the election of notaries of other residences as members of boards of directors, with certain limitations.

There having been established in the previous royal decree of notarial demarcation of Cuba, published on September 30, 1875, the rules which are to govern substitutions of notaries in cases of incapacity, absence, or sickness, and experience having proven that they were just, it appears proper to renew them now.

If the data which the notarial law in its article 3 requires to establish or modify a notarial demarcation can be procured, it is certain that said demarcation would answer better for the public service; but in the Peninsula as well as in Cuba and Puerto Rico the indispensable statistics to ascertain the number of instruments and contracts executed in each notarial office are lacking, as well as those relating to the importance of the questions they involved, the value of the stamped paper used in the protocols and in the copies and the fees collected by the notaries.

The only attempt at keeping notarial statistics are those which have been kept in the Philippines, in accordance with title 10 of the notarial regulations for those islands, and the undersigned secretary, considering the establishment of this reform very beneficial, suggests that it be included in the notarial regulations for Cuba and Puerto Rico when the time to modify the actual ones arrives, after having received the data requested of said islands, in this manner greater perfection being at some period attained.

In virtue of the remarks made, the undersigned has the honor to submit the annexed draft of a decree for the approval of Your Majesty.

Madrid, March 17, 1893.

Madam, at the royal feet of Your Majesty,

ANTONIO MAURA Y MONTANER.

ROYAL DECREE.

At the suggestion of the colonial secretary, in accordance with the council of secretaries and with the opinion of the treasury and colonial departments of the council of state, in the name of my august son the King, Don Alfonso XIII, and as Queen Regent of the realm, I decree the following:

ARTICLE 1. The notarial demarcation which is fixed by the annexed table, modified in accordance with the prescriptions of article 4 of the organic notarial regulations of October 29, 1873, shall become operative in the island of Cuba from the date of its publication in the *Gaceta* de la Habana.

ART. 2. For all legal effects notarial offices shall be divided into the following categories:

1. Of the seat of a notarial association;
2. Of the seat of a province;
3. Of the seat of a notarial district, and
4. Local notarial offices.

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ART. 3. Notarial offices which are actually vacant and which do not appear in the table approved by article 1 are hereby abolished.

The other notarial offices which are not included in the new demarcation are also abolished as soon as their actual holders cease in the same for any reason whatsoever.

ART. 4. The filling of vacant notarial offices in the island of Cuba shall take place subject to the following order of series established for each category and for each one of the notarial associations in which the island is divided:

1. Transfers as rewards among notaries of the island of Cuba.
2. Competition for promotion between notaries of the Peninsula and of the islands of Cuba, Puerto Rico, and the Philippines.

The vacant notarial offices which are announced in the foregoing series which can not be filled on account of a lack of applicants or because the latter lack the proper qualifications, shall be filled by competitive examinations.

The competitive examinations shall be held once in the island of Cuba and another time in the Peninsula, the examination being held the first time in the seat of the notarial association where there is the vacancy and the second in Madrid, continuing thus alternately.

ART. 5. In the transfer series the Government may transfer notaries of Cuba at their instance and as a reward; but they can not be transferred to a notarial office of a higher class if they have not previously served four years at least in a notarial office of a lower category. No fixed period shall be required for notarial offices of the same category.

In this series notaries in a category lower by two or three degrees may apply for the vacancy, provided they have served more than eight or twelve years, respectively; but they shall only be appointed in default of those who possess the conditions prescribed in the foregoing paragraph.

ART. 6. In the series of competition for promotion, to which the notaries practicing in Cuba, Puerto Rico, the Philippines and the Peninsula may aspire if they request it, the senior one in the service of the profession shall be appointed, provided he possesses a notarial office of a higher or equal category to the vacant one, or being lower by one, two, or three grades, he has served more than four, eight, or twelve years, respectively.

ART. 7. For the filling of vacancies in notarial offices, the colonial department shall in each case institute the proper proceedings. There shall also be kept a book in which to enter the series to which the vacancies correspond, according to the dates on which they occur, which said department shall declare in each case.

ART. 8. If the vacancy is to be filled by transfer, it shall be announced in the *Gaceta de la Habana*, fixing the period of thirty current days from the publication in which to present applications to the dean of the notarial association to which the vacancy corresponds.

After the period of the call has passed, the board of directors of the same association shall classify the applicants in this series, taking into consideration in the first place their merits and services as notaries, and in the second place other merits and services, the category and length of service, and the fact of their waiting for orders (excedentes). Should there be more than three, a list of the three first shall be made, without prejudice to forwarding to the colonial department the papers of all the applicants who possess the legal requirements. The appointment of one of the three proposed in the list shall be made, if said list has been correctly prepared; otherwise it shall be returned to the board for amendment, in accordance with the foregoing provisions.

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ART. 9. If the vacancies are to be filled by competition for promotion, the announcement shall be published in the *Gacetas* of Madrid, Habana, Puerto Rico, and Manila, the period of thirty days being fixed in Madrid and in each one of the islands of Cuba and Puerto Rico, and sixty in the Philippines, from the publication of the respective announcements, in which to present applications.

The notaries of the Peninsula, who desire to be appointed, shall present their petitions to the colonial department, and those of Cuba, Puerto Rico, and the Philippines shall forward them to the same department through the presiding judge of the proper audiencia, who shall transmit them by the first mail after the closing of the limit.

ART. 10. When the notarial offices are to be filled by competitive examination, the announcement of the vacancies shall be published in the official newspaper of Madrid, or of Habana, according as to whether the examination is to be held in the Peninsula or in Cuba, the period of thirty days being fixed in which the applicants may present their petitions to the colonial department or to the presiding judge of the audiencia of the territory where the vacancy has occurred, respectively.

If there are several notarial offices announced, they may be requested in one communication, stating briefly the ones desired and their order of preference, in a proper case.

In order that applicants may be admitted to the competitive examinations, they shall have to prove that they possess the conditions required for the position by article 10 of the notarial law and article 5 of the notarial regulations, for which purpose they shall attach to their petitions the proper documents which prove the same.

ART. 11. The competitive examinations shall be held in the manner prescribed by article 9 et seq. of the said regulations of October 29, 1873, with the modifications mentioned in the following articles:

ART. 12. The board which is to pass on the examinations held in the seats of the respective notarial associations shall be constituted in the manner established by the said article 9.

The board of examinations for those held in Madrid shall be composed of the official appointed by the colonial secretary, as president of the board, who must be a lawyer, and have the category of a chief of administration or associate justice of a territorial audiencia.

One professor of law of the Central University, appointed by the rector of the same.

One lawyer of the bar of Madrid, to be named by the dean of the same.

The dean of the notarial association of Madrid and the secretary of the same association, who shall act as secretary of the board.

ART. 13. The competitive examinations shall consist of two subjects for each applicant—one theoretical and the other practical. Both shall be public.

The first subject of the competitive examinations shall consist in answering twelve questions corresponding to the following matters: Two to civil law; two to mortgage legislation; two concerning notarial legislation; one to commercial law; one to penal law; one to administrative law; one to colonial legislation; one to legislation regarding stamped paper and the tax on property rights and transfer of property, and one to private international law.

The competitor shall select the twelve questions mentioned by lot, and shall answer them immediately, being allowed one hour and a half for this purpose.

The list relating to this examination shall consist of 240 points at least, two-thirds thereof to embrace civil law, mortgage legislation,

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and notarial legislation, the remaining third including the other subjects.

The list relating to the practical exercise shall contain 50 themes at least, corresponding to the same number of public instruments. The competitor shall also select by lot one of the said themes, proceeding then, and during the period of one hour at the most, to draft and place the instrument in the protocol; and when delivering it to the board, he shall verbally state what may be the form of the drafting of said instrument or contract, its necessary clauses, the notices which must be made, and anything else which must be done until the instrument is placed in the protocol and the first copy issued.

The board shall see that there are in the boxes more than half the number of questions corresponding to each subject and theme for the second examination, and shall make no remarks nor ask any questions of the competitor.

ART. 14. The colonial secretary shall prepare the list of questions and themes which are to serve in all the competitive examinations for the two theoretical and practical examinations which shall be published in the *Gacetas* of Madrid and of Habana, and communicated to the presiding judges of audiencias, for the due uniformity in the examinations which may be held.

ART. 15. The notarial offices which have been announced in any of the series mentioned which can not be filled on account of a lack of applicants, or because the latter do not possess the necessary requisites, shall be filled according to the series to which they again correspond, placing them according to the dates in which the vacancies occur in the corresponding book and not being subject to competitive examination until they have been declared abandoned in the series.

ART. 16. The notarial offices which become vacant by virtue of the provisions of article 117 of the Regulations shall not be filled according to the series, but by competitive examinations, which shall also be held alternately in the Peninsula or in the island of Cuba.

ART. 17. As members of the boards of directors of Matanzas and Santiago de Cuba there may be elected notaries who do not reside in the capital, but the dean and the secretary must in all cases reside therein.

Notaries who do not reside in the capital of the association, who are elected for the board of directors, shall betake themselves to said capital only for the duties proper to the offices conferred upon them, making use of the privilege granted them by article 113 of the Organic Regulations, or previously obtaining in accordance with the same the leave of absence they may require.

ART. 18. In the case of legal substitution provided for in article 6 of the notarial law, in places where there exists more than one notarial office, they shall mutually substitute each other.

In places where there is only one official of this class, he shall be substituted by the one of the nearest town, to be designated by the judge of first instance, who shall inform the respective audiencia thereof at the proper time.

ART. 19. In places where there are two or more notaries, in case of the occurrence of a vacancy or legal substitution, the one who follows in seniority, according to his diploma, shall be the substitute, and if it should be the newest one, he shall be substituted by the oldest in seniority.

ART. 20. The substitutions which are ordered may be changed for just cause duly proven in administrative proceedings, on the decision of the chamber of administration of the audiencia of the territory to which the notarial office corresponds.

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ART. 21. In the special cases referred to in article 115 of the Notarial Regulations, the notary who is temporarily incapacitated may designate another one of the same residence to substitute him, and should there not be another one, the substitution shall be made in the manner prescribed for vacancies.

ART. 22. The substitution of the vacant notarial offices does not give the substitutes any further right than to take charge of the protocol, being under the obligation to guard the same and to issue the copies which, in accordance with law, may be required thereof.

ART. 23. All prior provisions in conflict with the execution of the present decree are hereby repealed.

TEMPORARY PROVISIONS.

1. As long as there exist in the islands of Cuba and Puerto Rico alienated offices authorized to certify, conferred in perpetuity, and of anotadurías of mortgages the owners of which have a right to indemnification from the State for their respective offices, having requested it within the period fixed in the decree of February 25, 1874, February 28 and June 27, 1879, all the vacant notarial offices which exist at present and which may later become vacant, with the exception of those caused by pensions, the amount of which is to be paid by the successor in the notarial office, and which are treated of in article 117 of the Notarial Regulations of October 29, 1873, shall be filled without subjection to the series and with absolute preference between the owners of alienated offices of said classes to which the right to indemnification has been declared and who have renounced the same in due form to the State, according to the rules established in the royal decree of February 9, 1883, which grants said owners the right to personal presentation or of a third person for once only for notarial offices which may be vacant and which determined the manner of filling the same.

2. Should no owner of an alienated office who has a right thereto in accordance with the provisions of the said royal decree of February 9, 1883, request the vacancy, it shall be filled in accordance with the proper series, as provided in the present decree.

3. According to the royal decree of April 12, 1878, the owners of alienated offices conferred in perpetuity in the islands of Cuba and Puerto Rico who renounce in due form in favor of the State the indemnification treated of in the decree of February 25, 1874, and in the circular order of December 15 of the same year, shall have the right of nomination in person or of a third person for once only, provided they are legally eligible for the notarial offices which take the place of their offices in the same towns or districts, subject to the provisions mentioned, said notarial offices not being considered vacant.

Issued at the Palace on March 17, 1893.

MARÍA CRISTINA.

ANTONIO MAURA Y MONTANER,
Colonial Secretary.

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Table of the notarial demarcation of the island of Cuba.

AUDIENCIA OF HABANA.

[Notarial Association of Habana—34 notarial offices.]

Province of Habana:	
Notarial district of Habana—	
Habana	20
Marianao	1
Bejucal	1
Guanabacoa	2
Güines	1
Jaruco	1
San Antonio de los Baños	1
Province of Pinar del Rio:	
Pinar del Rio	2
Consolación del Sur	1
San Juan y Martinez	1
Guanajay	1
Guane	1
San Cristobal	1

AUDIENCIA OF MATANZAS.

[Notarial Association of Matanzas—23 notarial offices.]

Province of Matanzas:	
Matanzas	4
Alfonso XII	1
Cárdenas	2
Colón	1
Jovellanos	1
Province of Santa Clara:	
Santa Clara	3
Cienfuegos	2
Sagua la Grande	3
San Juan de los Remedios	2
Sancti Spíritus	2
Trinidad	2

AUDIENCIA OF SANTIAGO DE CUBA.

[Notarial Association of Santiago de Cuba—18 notarial offices.]

Province of Santiago de Cuba:	
Santiago de Cuba	4
Baracoa	2
Bayamo	1
Guantánamo	1
Holguín	1
Gibara	1
Manzanillo	2
Province of Puerto Príncipe:	
Puerto Príncipe	4
Morón	1

Madrid, March 17, 1893.
Approved by Her Majesty.

MAURA.

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TRANSLATION

OF

THE PENAL CODE

IN FORCE IN

CUBA AND PORTO RICO.

DIVISION OF CUSTOMS AND INSULAR AFFAIRS,
WAR DEPARTMENT.
July, 1900.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1900.

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ROYAL DECREE.

Upon the recommendation of the Colonial Secretary, with the advice and consent of the Council of Secretaries, and by virtue of the authority vested in my Government by article 89 of the Constitution of the Monarchy,

I hereby decree the following:

ART. 1. The amended Penal Code of June 17, 1870, shall be published and go into effect from the date of its publication in the territory within the jurisdiction of the islands of Cuba and Porto Rico, with the amendments recommended by the commission which has had charge of this work.

ART. 2. In the same manner there shall be published and observed in the islands referred to in the foregoing article the provisional law of criminal procedure for the application of said Code, with the changes recommended by the said commission.

ART. 3. The Government shall inform the Cortes of this decree and of the modified laws which are applied thereby to the colonial provinces.

Given at the palace on May 23, 1879.

ALFONSO.

SALVADOR DE ALBACETE,
Colonial Secretary.

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PENAL CODE.

BOOK I.

GENERAL PROVISIONS REGARDING CRIMES AND MISDEMEANORS, THE PERSONS LIABLE, AND THE PENALTIES.

TITLE I.

CRIMES AND MISDEMEANORS, AND CIRCUMSTANCES WHICH EXEMPT FROM, EXTENUATE, OR AGGRAVATE CRIMINAL LIABILITY.

CHAPTER I.

CRIMES AND MISDEMEANORS.

ART. 1. Crimes or misdemeanors are voluntary acts and omissions punished by law.

Acts and omissions punished by law are always presumed to be voluntary unless the contrary shall appear.

Any person voluntarily committing a crime or misdemeanor shall incur criminal liability, even though the wrongful act committed be different from that which he had intended to commit.

ART. 2. In case a court should have knowledge of any act which it considers proper to repress and which is not punished by law, it shall abstain from any proceedings in the matter, and shall state to the Government the reasons which induce it to believe that the act should be the object of penal legislation.

The court shall apply to the Government in the same manner, stating what may be proper, without prejudice to immediately imposing sentence, when a strict application of the provisions of the code would result in an excessive penalty, taking into consideration the degree of malice and the injury caused by the crime.

ART. 3. Not only is a consummated crime punishable, but also a frustrated crime and an attempt.

A crime is frustrated when the guilty person performs all of the acts of execution which should produce the crime as their consequence, but nevertheless do not constitute it by reason of causes independent of the will of the perpetrator.

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There is an attempt when the guilty person makes a beginning in the commission of a crime directly by overt acts, and does not perform all of the acts of execution which should produce the crime by reason of some cause or accident other than his own voluntary desistance.

ART. 4. A conspiracy and proposition to commit a crime are punishable only in the cases in which the law specially penalizes them.

There is a conspiracy when two or more persons act together for the commission of a crime and decide to commit it.

There is a proposition when the person who has decided to commit a crime proposes its execution to one or more persons.

ART. 5. Misdemeanors are punishable only when they have been consummated.

Exception is made of frustrated misdemeanors against persons or property.

ART. 6. Crimes are considered "grave" which the law punishes by penalties which in any of their degrees are corporal.

Crimes are considered "less grave" which the law represses by penalties which in their maximum degree are correctional.

Misdemeanors are infractions for which the law establishes light penalties.

ART. 7. Crimes which are punished by special laws are not subject to the provisions of this code.

CHAPTER II.

CIRCUMSTANCES WHICH EXEMPT FROM CRIMINAL LIABILITY.

ART. 8. The following are not delinquent and are therefore exempt from criminal liability:

1. An imbecile or lunatic, except when the latter has acted during a lucid interval.

When the imbecile or lunatic may have committed an act which the law defines as a "grave crime" the court shall order his confinement in one of the asylums established for persons thus afflicted, which he shall not be permitted to leave without the previous authorization of the same court.

If the act committed by the imbecile or lunatic is defined by the law as a "less grave crime" the court, according to the attendant circumstances, shall proceed in accordance with the provisions contained in the foregoing paragraph or turn over the imbecile or lunatic to his family, if the latter give sufficient security for his custody.

2. A person under 9 years of age.

3. A person over 9 years of age and under 15, unless he has acted with the exercise of judgment.

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The court shall make an express declaration with regard to this point in imposing a penalty or in declaring said person irresponsible.

When the minor is declared irresponsible, in accordance with the provisions of this and of the preceding number, he shall be delivered to his family with a charge to guard and educate him. In the absence of a person to guard and educate him he shall be taken to a charitable institution for the education of orphans and foundlings, and he shall not leave said institution except at the time and under the conditions prescribed for its inmates.

4. He who acts in defense of his person or rights, provided there are the following attendant circumstances:

(1) Illegal aggression.

(2) Reasonable necessity of the means employed to prevent or repel it.

(3) Lack of sufficient provocation on the part of the person defending himself.

5. He who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural, or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by consanguinity within the fourth civil degree, provided the first and second circumstances mentioned in the foregoing number are attendant, and provided that in case the party attacked first gave provocation, the defender took no part therein.

6. A slave acting in defense of his master, and a gratuitously emancipated freedman in that of his patron, and either when acting in defense of the spouses, ascendants, descendants, or brothers or sisters of the said master or patron, provided that in any of these cases the first and second circumstances mentioned in No. 4 of this article are attendant, and that in case there was provocation on the part of the party attacked the defender took no part therein.

7. He who acts in defense of the person or rights of a stranger, provided the first and second circumstances mentioned in No. 4 are attendant, and that the defender is not actuated by revenge, resentment, or other illegal motive.

8. He who in order to avoid an injury performs an act that causes damage to another's property, provided the following circumstances are attendant:

(1) Should the injury sought to be avoided really exist.

(2) Should it be greater than that caused to avoid it.

(3) Should there be no other practicable and less injurious means to prevent it.

9. He who while performing a legal act with due care causes some injury by mere accident without liability or intention of causing it.

10. He who acts by compulsion of an irresistible force.

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11. He who acts under the impulse of an uncontrollable fear of an equal or greater injury.

12. He who acts in the fulfillment of a duty or in the legitimate exercise of a right, trade, or office.

13. He who acts by virtue of obedience due another.

14. He who is guilty of an act of omission, being prevented by legitimate or insuperable causes.

Chapter III.

CIRCUMSTANCES WHICH EXTENUATE CRIMINAL LIABILITY.

Art. 9. The following are extenuating circumstances:

1. Those mentioned in the preceding chapter, when all the requisites necessary to exempt from criminal liability in the respective cases are not attendant.

2. When the culprit is under 18 years of age.

3. When the delinquent had no intention of committing so grave an injury as that which he inflicted.

4. When sufficient provocation or threat on the part of the injured party immediately preceded the act.

5. When the act was committed in the immediate vindication of a grave offense committed against the author of the crime, his spouse, ascendants, descendants, his legitimate, natural, or adopted brothers or sisters, or relatives by affinity in the same degrees.

6. When the act was committed in a state of intoxication, if the latter were not habitual or subsequent to the plan to commit the crime.

The courts shall decide in view of the circumstances of the persons and of the acts when intoxication is to be considered habitual.

7. When the person has acted under such powerful excitement as would naturally produce entire loss of reason and self-control.

8. And, finally, any other circumstance of a similar nature and analogous to the foregoing ones.

Chapter IV.

CIRCUMSTANCES WHICH AGGRAVATE CRIMINAL LIABILITY.

Art. 10. The following are aggravating circumstances:

1. When the injured person is the spouse or ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degrees of the offender.

2. When the injured person is the master or patron of the offender, or the spouse, ascendant, descendant, or legitimate brother or sister of the same.

3. When the act is committed with treachery.

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There is treachery when the culprit commits any crime against persons employing means, methods, or forms in the execution thereof which tend to directly and specially insure it without risk to the person of the criminal arising from the defense the injured party might make.

4. When the crime is committed in consideration of a price, reward, or promise.

5. When it is committed by means of inundation, fire, poison, explosion, stranding of a vessel or intentional damage, derailment of a locomotive, or by the use of any other artifice involving great destruction.

6. When the crime is committed by means of printing, lithography, photography, or other similar means facilitating publicity.

Courts shall take this circumstance into consideration, qualifying it as aggravating or extenuating, according to the nature and effects of the crime.

7. When the evil accomplished by the crime is deliberately increased by causing other evils unnecessary for its execution.

8. When the act is committed with evident premeditation.

9. When craft, fraud, or disguise is employed.

10. When advantage is taken of superior strength or means are employed to weaken the defense.

11. When the act is committed with abuse of confidence.

12. When advantage is taken by the culprit of his public position.

13. When means are employed or circumstances brought about which add ignominy to the natural effects of the act.

14. When the crime is committed on the occasion of a fire, shipwreck, or other calamity or misfortune.

15. When the crime is committed with the assistance of armed persons, or of persons who assure or provide immunity.

16. When it is committed at night, or in an uninhabited place or by a gang.

The court shall take this circumstance into consideration according to the nature and characteristics of the crime.

17. When the crime is committed in contempt of or with insult to the public authority.

18. When the culprit has been previously punished for a crime for which the law fixes an equal or greater penalty, or for two or more crimes for which it fixes a lighter penalty.

This circumstance shall be taken into consideration by the courts according to the circumstances of the delinquent and the nature and effects of the crime.

19. When he is a recidivist.

A recidivist is the culprit who being found guilty of one crime should have been sentenced for another crime included in the same title of the code.

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20. When the crime is committed in a sacred place, in the palace of the Governor-General, or in the presence of the latter, or where public authorities are engaged in the discharge of their duties.

21. When the act is committed with insult or in disregard for the respect which may be due the aggrieved party on account of his rank, age, or sex, or when it is committed in his dwelling if he has not given provocation.

22. When the act is committed against a white person by one who is not white.

This circumstance shall be taken into consideration by courts according to the nature and characteristics of the crime.

23. When the act is committed by wrongful entry.

Wrongful entry is such as is effected through any way not intended for the purpose.

24. When it is committed by breaking through a wall, roof, or floor, or by forcing doors or windows.

25. When the culprit is a vagrant.

By a vagrant is understood a person who possesses no property or income, does not habitually exercise any profession, art, or trade, and has no employment, office, industry, lawful occupation, or any other legitimate or known means of earning a livelihood, even though he may be married and have a fixed domicile.

26. When the act is committed by the use of arms prohibited by the regulations.

TITLE II.

PERSONS LIABLE FOR CRIMES AND MISDEMEANORS.

CHAPTER I.

PERSONS CRIMINALLY LIABLE FOR CRIMES AND MISDEMEANORS.

ART. 11. The following are criminally liable for crimes:

1. Principals.
2. Accomplices.
3. Accessories.

The following are criminally liable for misdemeanors:

1. Principals.
2. Accomplices.

ART. 12.[1] The following are considered principals:

1. Those who take a direct part in the execution of the act.
2. Those who directly force or induce others to execute it.
3. Those who cooperate in the execution of the act by another act without which it could not have been accomplished.

[1] See Order No. 67, Headquarters Division of Cuba, June 1, 1899, page 135.

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ART. 13. Accomplices are those persons who, not being included in the preceding article, cooperate in the execution of the act by other previous or simultaneous acts.

ART. 14. Accessories are those who, having knowledge of the commission of the crime, and without having participated therein either as principal or accomplices, subsequently take part in its execution in any of the following manners:

1. By themselves making profit or by assisting the delinquents to profit by the effects of the crime.

2. By concealing or rendering useless the body, effects, or instruments of the crime in order to prevent its discovery.

3. By harboring, concealing, or assisting in the escape of the culprit, provided any of the following circumstances are attendant:

(1) When the accessory takes advantage of any public office he may be holding.

(2) When the delinquent is guilty of treason, regicide, parricide, assassination, attempt against the life of the Governor-General, or known to be an habitual criminal in any other crime.

ART. 15. Those who are accessories of their spouses, ascendants, descendants, legitimate, natural, or adopted brothers or sisters, or relatives by affinity in the same degrees, are exempt from the penalties imposed upon accessories; also slaves and freedmen with regard to their masters and patrons or the spouses or other relatives of the latter in the degrees mentioned, with the only exception of such accessories as may be included in No. 1 of the preceding article.

CHAPTER II.

PERSONS CIVILLY LIABLE FOR CRIMES AND MISDEMEANORS.

ART. 16. Every person criminally liable for a crime or misdemeanor is also civilly liable.

ART. 17. The exemption from criminal liability declared in Nos. 1, 2, 3, 8, and 11 of article 8 does not include exemption from civil liability, which shall be enforced subject to the following rules:

(1) In cases 1, 2, and 3, the persons who are civilly liable for acts committed by a lunatic or imbecile, or a person under 9 years of age, or over this age and under 15, who has not acted with the exercise of judgment, are those who have them under their authority, legal guardianship, or power, unless they prove that there was no blame or negligence on their part.

Should there be no person having them under his authority, legal guardianship, or power, or if such person be insolvent, the said lunatics, imbeciles, or minors shall answer with their own property, excepting that part which is exempted for their support in accordance with the civil law.

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(2) In the case of No. 7, those persons are civilly liable from whom the injury was warded off in proportion to the benefit they may have derived.

The court shall fix, according to its judgment, the proportional amount for which each interested party shall be liable.

When the respective amounts can not be equitably apportioned, even approximately, or when the liability extends to the State or the greater part of a town, and in any case, if the damage were caused with the assent of the authorities or their agents, indemnity shall be made in the manner prescribed by special laws and regulations.

(3) In the case of No. 11, those who caused the fear shall be principally liable, and subsidiarily, in the absence of the former, those who committed the act, reserving with regard to the latter the benefit of competency.

ART. 18. Innkeepers, tavern keepers, and any other persons or enterprises shall be civilly liable, in the absence of persons criminally so, for crimes committed within their establishments, whenever any infraction of general or special police regulations by them or their employees may have occurred.

Innkeepers are furthermore subsidiarily liable for the restitution of effects robbed or stolen within their houses from persons who are stopping therein, or for the indemnification of said goods, provided the persons have notified in advance either the innkeeper himself, or the person representing him, of the deposit of said effects in the inn; and provided furthermore, that they have heeded the warnings that said innkeepers or their substitutes may have given them with regard to the care and vigilance of their effects. There shall be no liability in case of robbery by violence or intimidation of persons, except it be committed by the employees of the inn.

ART. 19. The subsidiary liability established in the preceding article shall also apply to masters, teachers, persons, and enterprises engaged in any kind of industry, for crimes and misdemeanors committed by their slaves, pupils, officers, apprentices, or employees in the discharge of their obligations or service.

TITLE III.

PENALTIES.

CHAPTER I.

PENALTIES IN GENERAL.

ART. 20. No crime or misdemeanor shall be punished by a penalty which was not established by law prior to its commission.

ART. 21. Penal laws shall have a retroactive effect in so far as they favor the person guilty of a crime or misdemeanor, even though at

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the time of the publication of said laws a final sentence should have been pronounced and the convicted person is serving his sentence.

ART. 22. The pardon of the offended party does not extinguish a penal action. This is not understood with regard to crimes which can not be prosecuted without the previous denunciation or consent of the injured party.

Civil liability with regard to the interests of the party condoning an offense is extinguished by his express renunciation.

ART. 23. The following shall not be considered as penalties:

1. Detention and temporary confinement of the accused persons.

2. Suspension from public employment or office ordered during proceedings, or in order to institute them.

3. Fines and other corrections which, in the use of their administrative or disciplinary powers, superiors may impose upon their subordinates or upon those under their direction.

4. Deprivation of rights and reparations, which the civil laws may establish in penal form.

CHAPTER II.

CLASSIFICATION OF PENALTIES.

ART. 24.[1] The penalties which may be imposed according to this code, and their different classes, are those included in the following general scale:

Corporal penalties.—Death; *cadena perpetua; reclusión perpetua; relegación perpetua;* perpetual expulsion; *cadena temporal; reclusión temporal; relegación temporal;* temporary expulsion; *presidio mayor; prisión mayor; confinamiento;* perpetual absolute disqualification; temporary absolute disqualification; perpetual special disqualification from public office, the right of suffrage, active and passive, and from the exercise of a profession or trade; temporary special disqualification from a public office, the right of suffrage, both active and passive, and from the exercise of a profession or trade.

Correctional penalties.—Presidio correccional; prisión correccional; banishment; public censure; suspension from public office, active and passive right of suffrage, and from the exercise of a profession or trade; *arresto mayor.*

Light penalties.—Arresto menor; private censure.

Penalties common to the three preceding classes.—Fine; caution.

Accessory penalties.—Degradation; civil interdiction; subjection to the surveillance of the authorities; forfeiture or confiscation of the instruments and proceeds of the crime; payment of costs.

ART. 25. A fine, when imposed as the principal penalty, shall be considered as a corporal penalty if it exceeds 6,250 pesetas; as correc-

[1] See Order No. 26, Headquarters Division of Cuba, January 18, 1900, page 138.

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tional if it does not exceed 6,250 and is not less than 325 pesetas, and light if it does not amount to 325 pesetas.

ART. 26. The penalties of disqualification and suspension from public office and the right of suffrage are accessory in those cases when, not being specially imposed by law, it declares that other penalties shall include them.

Costs of proceedings are understood to be imposed by law upon those criminally liable for any crime or misdemeanor.

CHAPTER III.

DURATION AND EFFECT OF PENALTIES.

SECTION I.—*Duration of penalties.*

ART. 27. Persons condemned to *cadena*, *reclusión*, and *relegación perpetuas*, or to perpetual expulsion, shall be pardoned after having served thirty years of their sentence, unless on account of their conduct or for other serious reasons they shall not be worthy of pardon in the opinion of the Government.

The penalties of *cadena*, *reclusión*, and *relegación temporales*, and temporary expulsion, shall last for twelve years and one day to twenty years.

Those of *presidio* and *prisión mayores* and *confinamiento* shall last from six years and one day to twelve years.

Those of temporary absolute and temporary special disqualification shall last from six years and one day to twelve years.

Those of *presidio correccional* and *prisión correccional* shall last from six months and one day to six years.

That of suspension shall last from one month and one day to six years.

That of *arresto mayor* shall last from one month and one day to six months.

That of *arresto menor* shall last from one to thirty days.

That of caution shall last for the time the court may determine.

ART. 28. The provisions of the preceding article shall not apply to penalties imposed as accessory to others, in which case the accessory penalties shall have the duration respectively fixed by law.

ART. 29. When the guilty person is imprisoned, the duration of the temporary penalties shall commence from the day on which the condemnatory sentence was made final.

When the guilty person may not be imprisoned, the duration of penalties consisting in deprivation of liberty shall commence as soon as said person is at the disposal of the judicial authorities, in order to serve his sentence.

The duration of the penalties of expulsion, *confinamiento*, and banishment shall commence only from the day on which the guilty person commenced to serve his sentence.

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If the guilty person should enter an appeal and it is refused, he shall not be allowed the time that has elapsed between the sentence appealed from and the one rejecting the appeal.

SECTION II.—*Effects of penalties according to their respective nature.*

ART. 30. The penalty of perpetual absolute disqualification shall produce the following effects:

1. The deprivation of the person punished of all honors which he may be enjoying, and of all public employments and offices which he may be holding, even though the latter come from popular election.

2. The deprivation of the rights to vote and to be elected to public offices of popular election.

3. The disqualification to acquire the honors, offices, employments and rights mentioned.

4. The loss of all right to retirement with pay, suspension with part pay, or any other pension for offices he may have previously filled, without prejudice to the pension for support the Government may grant him as a reward for distinguished services.

Under this provision are not included rights already acquired at the time of the condemnation by the widow or children of the person punished.

ART. 31. The penalty of temporary absolute disqualification shall produce the following effects:

1. The deprivation of the person sentenced of all honors he may be enjoying, and of all public employment and offices which he may be holding, although the latter be filled by popular election.

2. The deprivation of the right of voting and being elected to public office by popular election during the term of the sentence.

3. The disqualification of acquiring the honors, employments, offices, and rights mentioned in No. 1, likewise during the term of the sentence.

ART. 32. Perpetual special disqualification from public office shall produce the following effects:

1. The loss of the office or employment which it affects, and of the honors attached thereto.

2. Disqualification to acquire other similar ones.

ART. 33. Perpetual special disqualification from the right of suffrage shall perpetually deprive the person punished of the right to vote and being elected to the elective public office in question.

ART. 34. Temporary special disqualification for a public office shall produce the following effects:

1. Loss of the office or employment which it affects, as well as the honors attached thereto.

2. Disqualification to acquire other similar offices or employments during the term of the sentence.

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ART. 35. Temporary special disqualification from the right of suffrage shall deprive the person punished of the right of voting and being elected during the term of sentence for the popular elective office affected by the sentence.

ART. 36. Suspension from a public office shall disqualify the person punished from exercising the same, and from obtaining other similar offices during the term of the sentence.

ART. 37. Suspension from the right of suffrage shall likewise disqualify the person for the exercise thereof during the term of the sentence.

ART. 38. When an ecclesiastical person is sentenced to the penalty of disqualification in any of its classes, or to that of suspension, the effects thereof shall be limited respectively to the offices, rights, or honors which he does not derive from the church, and to the salary to which he is entitled by reason of his ecclesiastical office.

ART. 39. Perpetual special disqualification for a profession or trade shall perpetually deprive the person punished of the privilege to exercise the same.

Temporary disqualification therefor shall deprive him in the same manner during the term of the sentence.

ART. 40. Suspension from the exercise of a profession or trade shall produce the same effect as temporary disqualification during the term of the sentence.

ART. 41. Civil interdiction shall deprive the person punished as long as he suffers it, of the rights of paternal authority, guardianship of person or property, participation in the family council, marital authority, the administration of property, and the right to dispose of his own property by acts *inter vivos*. Those cases are excepted in which the law explicitly limits its effects.

ART. 42. Subjection to the surveillance of the authorities imposes the following obligations on the persons punished:

1. That of fixing his domicile and giving notice thereof to the authority immediately in charge of his surveillance, not being allowed to change it without the knowledge and permission of said authority in writing.

2. To observe the rules of inspection prescribed.

3. To adopt some trade, art, industry, or profession, should he not have known means of subsistence of his own.

Whenever a person punished is placed under the surveillance of the authorities notice thereof shall be given to the Government and to the Governor-General.

ART. 43. The penalty of caution shall oblige the person punished to secure a sufficient bondsman, who shall guarantee that said person will not commit the injury which it is endeavored to prevent, otherwise binding himself to pay the sum which the court may have fixed in the sentence.

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The court shall fix the term of the bond in its discretion.

If the person punished should not furnish bond, he shall incur the penalty of banishment.

ART. 44. Persons sentenced to the penalties of disqualification for public offices, for the right of suffrage, or for a profession or trade, perpetually or temporarily, may be rehabilitated in the form prescribed by law.

ART. 45. A pardon shall not produce rehabilitation for the discharge of public office and for the exercise of the right of suffrage, unless said rehabilitation be specially granted in the pardon.

ART. 46. Costs shall include fees and indemnifications incurred in judicial proceedings, whether consisting of fixed or unalterable amounts, by reason of being previously fixed by laws, regulations, or royal orders, or not fixed by any schedule.

ART. 47. The amount of fees and indemnifications not previously fixed in the terms prescribed in the preceding article shall be fixed by the court in the manner established by the law of criminal procedure.

ART. 48. In case the property of the person punished should not be sufficient to cover all the pecuniary liabilities, they shall be satisfied in the following order:

1. Reparation of the injury caused and indemnification of damages.
2. Indemnification to the State for the amount of stamped paper and other expenses which may have been incurred on his account in the cause.
3. The costs of the private accuser.
4. Other costs of procedure, including those of the defense of the person prosecuted, without preference among the persons interested.
5. The fine.

Should the crime have been of those which can be prosecuted only at the instance of a party, the costs of the private accuser shall be satisfied in preference to the indemnification to the State.

ART. 49. If the person sentenced should not have property to satisfy the pecuniary liabilities included in Nos. 1, 3, and 5 of the preceding article, he shall be subject to a subsidiary personal liability at the rate of one day for every 12½ pesetas, according to the following rules:

1. If the principal penalty imposed is to be undergone by the criminal confined in a penal institution, he shall continue therein, although said detention can not exceed one-third of the term of the sentence, and in no case can it exceed one year.
2. If the principal penalty imposed is not to be undergone by the criminal in a penal institution and its duration is fixed, he shall continue subject, for the time mentioned in the preceding article, to the same deprivations of which said penalty must consist.
3. If the principal penalty imposed should be a censure, fine, or caution, the insolvent guilty person shall be confined in the district jail

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for a term which can not exceed six months in any case, should he have been prosecuted for a crime, or fifteen days should he have been prosecuted for a misdemeanor.

ART. 50. The subsidiary personal liability on account of insolvency shall not be imposed upon the person condemned to a penalty higher in the general scale than that of *presidio correccional.*

ART. 51. The personal liability which the criminal may have incurred by reason of insolvency shall not exempt him from the reparation of the injury caused and indemnification of damages if his pecuniary circumstances should improve, but it shall exempt him from the other pecuniary liabilities included in numbers 3 and 5 of article 48.

SECTION III.—*Punishments which include other accessory penalties.*

ART. 52. The death penalty, when it is not carried out because the criminal has been pardoned, shall include perpetual absolute disqualification and subjection of the criminal to the surveillance of the authorities for the term of his life, unless said accessory penalty has been specially remitted in the pardon.

ART. 53. The penalty of *cadena perpetua* shall include the following accessory penalties:

1. Degradation, in case the principal penalty of *cadena perpetua* is imposed upon a public official by reason of abuse committed in the exercise of his office, if said office is one of those which confer a permanent character.
2. Civil interdiction.
3. Subjection to the surveillance of the authorities during the life of the person punished.

Even though the latter should obtain pardon from the principal penalty, he shall suffer that of perpetual absolute disqualification and subjection to the surveillance of the authorities during his life, unless this accessory penalty has been remitted in the pardon of the principal one.

ART. 54. The penalties of *reclusión perpetua*, *relegación perpetua*, and perpetual expulsion shall include that of perpetual absolute disqualification and subjection to the surveillance of the authorities during the life of the person punished, said accessory penalties being suffered by the latter even though he may have been pardoned as to the principal one, if they have not been remitted in the pardon.

ART. 55. The penalty of *cadena temporal* shall include the following accessory penalties:

1. Civil interdiction of the person punished during the term of the sentence.
2. Perpetual absolute disqualification.

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3. Subjection to the surveillance of the authorities during the life of the person punished.

ART. 56. The penalty of *presidio mayor* shall include those of absolute temporary disqualification and subjection to the surveillance of the authorities for a term equal to that of the principal punishment, which shall begin to be counted from the date of the fulfillment of the same.

ART. 57. The penalty of *presidio correccional* shall include suspension from any public office, profession, trade, or from the right of suffrage.

ART. 58. The penalties of *reclusión temporal*, *relegación temporal*, and temporary expulsion shall include temporary absolute disqualification during their term and subjection to the surveillance of the authorities during the term of the sentence and as long again, which shall be counted from the time the sentence is fulfilled.

ART. 59. The penalty of *confinamiento* shall include that of temporary absolute disqualification and subjection to the surveillance of the authorities during the term of the sentence and as much again, which shall begin to be counted from the completion of the former.

ART. 60. The penalties of *prisión mayor* and *prisión correccional* and *arresto mayor* shall include suspension from any office and from the right of suffrage during the term of the sentence.

ART. 61. Every penalty which may be imposed for a crime shall include the forfeiture of the proceeds of the crime and of the instruments used in its execution.

Both shall be confiscated unless they belong to a third party who is not responsible for the crime.

Things thus confiscated shall be sold if they are of licit commerce, the proceeds thereof being applied to cover the liabilities of the person punished, or shall be rendered useless if they are illicit.

CHAPTER IV.

THE APPLICATION OF PENALTIES.

SECTION I.—*Rules for the application of penalties to principals in a consummated crime, frustrated crime, and attempt, and to accomplices and accessories thereto.*

ART. 62. Upon the principals in a crime or misdemeanor the penalty shall be imposed which may have been prescribed by the law for said crime or misdemeanor.

Whenever the law shall establish the penalty for a crime in general terms it shall be understood as being imposed upon the consummated crime.

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ART. 63. In cases in which the crime committed is different from that which the culprit had intended to commit the following rules shall be observed:

1. If the penalty prescribed for the accomplished crime should be higher than that corresponding to the crime which the culprit had intended to commit, the penalty corresponding to the second shall be imposed on the culprit in its maximum degree.

2. If the penalty prescribed for the accomplished crime should be lower than that prescribed for the one which the culprit had intended to commit, the penalty corresponding to the former shall be imposed on him, also in its maximum degree.

3. The provisions of the preceding rule shall not be applicable if the acts committed by the culprit should constitute, besides, an attempt to commit another crime or another frustrated crime, if the law should punish these acts with a higher penalty, in which case that corresponding to the attempt or frustrated crime shall be imposed in its maximum degree.

ART. 64. Upon the principals in a frustrated crime shall be imposed the penalty next lower in degree than that prescribed by the law for the consummated crime.

The same rule shall be observed regarding the principals in frustrated misdemeanors.

ART. 65. Upon the principals in an attempt to commit a crime shall be imposed a penalty lower by two degrees than that prescribed by law for the consummated crime.

ART. 66. Upon the accomplices in a consummated crime shall be imposed the penalty next lower in degree than that prescribed by law for the consummated crime.

ART. 67. Upon the accessories in a consummated crime shall be imposed the penalty lower by two degrees than that prescribed by law for the consummated crime.

ART. 68. Upon the accomplices in a frustrated crime shall be imposed the penalty next lower in degree than that prescribed by law for the frustrated crime.

ART. 69. Upon the accessories in a frustrated crime shall be imposed the penalty lower by two degrees than that prescribed by law for the frustrated crime.

ART. 70. Upon the accomplices in an attempt to commit a crime shall be imposed the penalty next lower in degree than that prescribed by law for the attempt to commit the crime.

ART. 71. Upon the accessories in an attempt to commit a crime shall be imposed the penalty lower by two degrees than that prescribed by law for the attempt to commit the crime.

ART. 72. There are excepted from the provisions of articles 67, 69, and 71 the accomplices mentioned in No. 3 of article 14, in whose

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cases the first circumstance mentioned in said number is attendant, upon whom the penalty of perpetual special disqualification shall be imposed if the delinquent harbored should have been guilty of a grave crime, and that of temporary special disqualification if he should have been guilty of a less grave crime.

ART. 73. The general provisions contained in articles 64 to 72, inclusive, shall not be applicable to cases in which the frustrated crime, the attempt, the complicity, or the participation after the fact (*encubrimiento*) are specially penalized by law.

ART. 74. In order to graduate the penalties which, in accordance with the provisions of articles 64 to 72, inclusive, should be imposed on the principals in a frustrated crime and in an attempt to commit crime, and upon the accomplices and accessories, the following rules shall be observed:

1. When the penalty prescribed for the crime is a single and indivisible one, the penalty next lower shall be that following in number the indivisible penalty in the respective graduated scale.

2. When the penalty prescribed for the crime is composed of two indivisible penalties, or of one or more divisible penalties imposed to their full limit, the penalty next lower shall be that which follows in number the lesser of the penalties imposed in the respective graduated scale.

3. When the penalty prescribed for the crime is composed of one or two indivisible penalties and the maximum degree of another divisible penalty, the penalty next lower shall consist of the medium and minimum degrees of the said divisible penalty and the maximum degree of that following in number in the respective graduated scale.

4. When the penalty prescribed for the crime is composed of various degrees, corresponding to several divisible penalties, that next lower shall consist of the degree that follows the minimum of those constituting the penalty imposed, and of the two others next immediate, which will be taken from the penalty imposed, if it should have any, and otherwise from the penalty following in number in the respective graduated scale.

5. When the law prescribes the penalty for the crime in a form not specially mentioned in the four preceding rules, the courts, proceding by analogy, shall impose the penalties corresponding to principals, accomplices, and accessories in a frustrated crime and in an attempt to commit a crime.

ART. 75. When the penalty prescribed by law for a crime should have been included in two scales, the graduation prescribed in the preceding article shall be made according to the scale which includes the penalties by which are punished the greater part of the crimes referred to in the section, chapter, or title in which the crime is contained.

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Demonstrative table of the provisions of this chapter.

Penalty prescribed for the crime.	Penalty pertaining to the principal in a frustrated crime and the accomplice in a consummated crime.	Penalty pertaining to the principal in an attempt at consummated crime, accessory in the same crime, and accomplices in a frustrated crime.	Penalty pertaining to an accessory in a frustrated crime and accomplices in attempt.	Penalty pertaining to an accessory in a attempt to commit a crime.
First case, death	*Cadena perpetua*..	*Cadena temporal*....	*Presidio mayor*....	*Presidio correccional.*
Second case, *cadena perpetua* to death.	*Cadena temporal*..	*Presidio mayor*.....	*Presidio correccional.*	*Arresto mayor.*
Third case, *cadena temporal* in its maximum degree to death.	*Presidio mayor* in its maximum degree to *cadena temporal* in its medium degree.	*Presidio correccional* in its maximum degree to *presidio mayor* in its medium degree.	*Arresto mayor* in its maximum degree to *presidio correccional* in its medium degree.	Fine and *arresto mayor* in its minimum and medium degrees.
Fourth case, *presidio mayor* in its maximum degree to *cadena temporal* in its medium degree.	*Presidio correccional* in its maximum degree to *presidio mayor* in its medium degree	*Arresto mayor* in its maximum degree to *presidio correccional* in its medium degree.	Fine and *arresto mayor* in its minimum and medium degrees.	Fine.

SECTION II.—*Rules for the application of penalties with regard to extenuating and aggravating circumstances.*

ART. 76. Extenuating or aggravating circumstances shall be taken into consideration in reducing or increasing the penalty in the cases and in accordance with the rules prescribed in this section.

ART. 77. Aggravating circumstances which in themselves constitute a crime specially punished by law, or which the law has mentioned in describing and penalizing it, shall not have the effect of increasing a penalty.

Nor shall this effect be produced by aggravating circumstances that are inherent in such manner to the crime that without the attendance thereof the crime could not be committed.

ART. 78. The aggravating or extenuating circumstances that consist in the moral condition of the delinquent in his private relations with the injured party, or in any other personal cause, shall serve to aggravate or diminish the liability of only the principals, accomplices, or accessories who may be affected thereby.

The circumstances which consist in the material execution of the deed or in the means employed to accomplish it shall serve to aggravate or diminish the liability of those persons only who were acquainted with them at the moment of the commission of the crime or of their cooperation therein.

ART. 79. In cases in which the law prescribes only one indivisible penalty the courts shall apply it without consideration of the aggravating or extenuating circumstances attending the deed.

In cases in which the law prescribes a punishment composed of two indivisible penalties the following rules shall be observed in the application thereof:

1. If an aggravating circumstance alone should have attended the deed, the higher penalty shall be applied.

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2. If neither extenuating nor aggravating circumstances should have attended the deed the lesser penalty shall be applied.

3. If an extenuating circumstance and no aggravating one should have attended the deed the lesser penalty shall be applied.

4. If both aggravating and extenuating circumstances should have attended the deed the courts shall make reasonable allowance therefor, with regard to their number or importance, in applying the penalty in accordance with the foregoing rules, according to the result produced by such allowance.

ART. 80. In cases in which the penalty prescribed by law contains three degrees, whether it be a singe divisible penalty or composed of three different penalties, each of which forms a degree, in accordance with the provisions of articles 95 and 96, the courts shall observe for the application of the penalty the following rules, according as to whether there are or not extenuating or aggravating circumstances:

1. If neither aggravating nor extenuating circumstances should have attended the deed they shall impose the penalty prescribed by law in its medium degree.

2. If only an extenuating circumstance should have attended the deed they shall impose the penalty in its minimum degree.

3. If only an aggravating circumstance should have attended the deed they shall impose the penalty in its maximum degree.

4. If both extenuating and aggravating circumstances should have attended the deed they shall make a reasonable allowance in the designation of the penalty by counterbalancing the weight of the one and the other.

5. If two or more very marked extenuating circumstances and no aggravating circumstance should have attended the act the court shall impose the penalty next lower to that prescribed by the law, in the degree that it considers proper, according to the number and importance of such circumstances.

6. Whatever may be the number and importance of the aggravating circumstances, the courts shall not impose a higher penalty than that prescribed by law in its maximum degree.

7. Within the limits of each degree the courts shall determine the extent of the penalty, in view of the number and importance of the aggravating and extenuating circumstances and the greater or lesser extent of the evil produced by the crime.

ART. 81. In those cases in which the penalty prescribed by law is not composed of three degrees the courts shall apply the rules contained in the foregoing article, dividing into three equal periods the term embraced in the penalty imposed, forming one degree of each of the three periods.

ART. 82. In the application of fines the courts may go to the full limit within which the law permits their imposition, taking into consideration, in order to determine their amount in each case, not only

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the aggravating and extenuating circumstances of the act, but chiefly the wealth or means of the culprit.

ART. 83. If all the conditions necessary to exempt from liability in the case of No. 9 of article 8 should not be attendant, the provisions of article 590 shall be observed.

ART. 84. Upon a person under 15 but over 9 years of age, who is not exempt from liability by reason of the court having declared that he acted with the exercise of judgment, a discretionary penalty shall be imposed, but always lower by two degrees at least than that prescribed by law for the crime which he committed.

Upon a person over 15 and under 18 years of age the penalty shall always be imposed in the proper degree which is next lower than that prescribed by law.

ART. 85. A penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed were not wholly excusable by reason of the lack of some of the conditions required to exempt from criminal liability in the respective cases mentioned in article 8, provided that the greater number thereof be attendant, the penalty being imposed in the degree the courts may consider proper, taking into consideration the number and importance of the requisites absent or present.

This provision is understood without prejudice to that contained in article 83.

SECTION III.—*Provisions common to the two preceding sections.*

ART. 86. Upon a person guilty of two or more crimes or misdemeanors shall be imposed all the penalties corresponding to the various violations of the law, to be simultaneously served if possible, in view of the nature and effects of such penalties.

ART. 87. If all or any of the penalties corresponding to the various violations of the law could not be simultaneously served by the person condemned, the following rules shall be observed with regard thereto:

1. In the imposition of the penalties, the order of their respective severity shall be observed for their successive fulfillment, so far as possible, by the person condemned by reason of having obtained pardon for, or served out, those first imposed.

For the observance of the provisions of the preceding paragraph, the respective severity of the penalties shall be determined in accordance with the following scale: Death, *cadena perpetua*, *cadena temporal*, *reclusión perpetua*, *reclusión temporal*, *presidio mayor*, *prisión mayor*, *presidio correccional*, *prisión correccional*, *arresto mayor*, *relegación perpetua*, *relegación temporal*, perpetual expulsion, temporary expulsion, *confinamiento*, banishment.

2. Notwithstanding the provisions contained in the preceding rule, the maximum duration of the sentence of the culprit shall not exceed three times the time which the most severe of the penalties that he

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may have incurred should have imposed on him; and there shall not be imposed on him other proper penalties when those already imposed shall have covered the maximum of the aforementioned term.

In no case shall such maximum term exceed forty years.

For the application of the provisions of this rule, the duration of a perpetual penalty shall be reckoned at thirty years.

ART. 88. The provisions of the foregoing article are not applicable to a case in which a single act should constitute two or more crimes, or if one of them should be a necessary means for committing the others.

In such cases, only the penalty corresponding to the more serious crime shall be imposed in its maximum degree.

ART. 89. Whenever the courts should impose a penalty that includes other punishments by provision of law, according to the prescriptions of Section III of the preceding chapter, they shall also specifically sentence the culprit to the said penalties.

ART. 90. In cases for which the law prescribes a penalty lower or higher by one or two degrees than another given penalty, the rules prescribed in articles 74 and 75 shall be observed in graduating it.

The lower or higher penalty shall be taken from the graduated scale in which the given penalty may be included.

If a penalty higher than that of *arresto mayor* is to be applied, it shall be taken from the scale including the penalties prescribed for the graver crimes of the same character as that punished with *arresto mayor*.

The courts shall bear in mind, in making application of a lower or higher penalty, the following graduated scales:

Scale No. 1.—(1) Death, (2) *cadena perpetua*, (3) *cadena temporal*, (4) *presidio mayor*, (5) *presidio correccional*, (6) *arresto*.

Scale No. 2.—(1) Death, (2) *reclusión perpetua*, (3) *reclusión temporal*, (4) *prisión mayor*, (5) *prisión correccional*, (6) *arresto*.

Scale No. 3.—(1) *Relegación perpetua*, (2) *relegación temporal*, (3) *confinamiento*, (4) banishment, (5) public censure, (6) caution.

Scale No. 4.—(1) Perpetual expulsion, (2) temporary expulsion, (3) *confinamiento*, (4) banishment, (5) public censure, (6) caution.

Scale No. 5.—(1) Perpetual absolute disqualification, (2) temporary absolute disqualification, (3) suspension from public office, right of suffrage, active and passive, profession or trade.

Scale No. 6.—(1) Perpetual special disqualification, (2) temporary special disqualification, or (3) suspension from public office, right of suffrage, active and passive, profession and trade.

ART. 91. The fine shall be considered as the last penalty in every one of the preceding graduated scales.

If it should be imposed in this character, the subsidiary liability corresponding thereto by reason of the insolvency of the culprit, established in article 49, can not exceed the duration of the term pertaining to the penalty immediately higher in the respective scale.

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ART. 92. In cases to which the law prescribes a penalty higher than another determined penalty, without specifically designating what it may be, if there should be no higher penalty in the respective scale, or if the former should be that of death, the following shall be considered as penalties immediately higher:

1. If the penalty determined were that of *cadena* or *reclusión perpetua*, or perpetual, absolute, or special disqualification, the same penalties, with the proviso that the condemned person shall not enjoy the benefit established in article 27 of this code until the completion of forty years.

2. If it should be that of *relegación perpetua*, the penalty of *reclusión perpetua*.

3. If it should be that of perpetual expulsion, the next higher penalty shall be that of *relegación perpetua*.

ART. 93. Whenever it may be necessary to increase or reduce the penalty of fine by one or more degrees, it shall be increased or reduced respectively for each degree by the fourth part of the maximum amount prescribed by law, and in order to reduce it the reverse operation shall take place.

The same rules shall be observed with regard to fines that do not consist of a fixed amount, but of a proportional amount.

ART. 94. When women shall commit crimes which this code punishes with the penalties of *cadena perpetua* or *cadena temporal*, or with those of *presidio mayor* or *presidio correccional*, there shall be respectively imposed upon them those of *reclusión perpetua* or *reclusión temporal*, *prisión mayor* or *prisión correccional*.

ART. 95. In the divisible penalties the legal term of duration is understood as distributed into three parts, forming the three degrees; that is, the minimum, medium, and maximum, in the manner shown in the following:

Table showing the duration of divisible penalties and the time which each one of their degrees embraces.

Penalties.	Time included by the penalty in its entirety.	Time included in its minimum degree.	Time included in its medium degree.	Time included in its maximum degree.
Temporary *cadena*, *reclusión*, *relegación*, expulsion.	From 12 years and 1 day to 20 years.	From 12 years and 1 day to 14 years and 8 months.	From 14 years, 8 months, and 1 day, to 17 years and 4 months.	From 17 years, 4 months, and 1 day to 20 years.
Presidio and *prisión mayor*, *confinamiento*, temporary, absolute, or special disqualification.	From 6 years and 1 day to 12 years.	From 6 years and 1 day to 8 years.	From 8 years and 1 day to 10 years.	From 10 years and 1 day to 12 years.
Presidio and *prisión correccional*, and banishment.	From 6 months and 1 day to 6 years.	From 6 months and 1 day to 2 years and 4 months.	From 2 years, 4 months, and 1 day, to 4 years and 2 months.	From 4 years, 2 months, and 1 day to 6 years.
Suspension.....	From 1 month and 1 day to 6 years.	From 1 month and 1 day to 2 years.	From 2 years and 1 day to 4 years.	From 4 years and 1 day to 6 years.
Arresto mayor.....	From 1 month and 1 day to 6 months.	From 1 to 2 months.	From 2 months and 1 day to 4 months.	From 4 months and 1 day to 6 months.
Arresto menor.....	From 1 to 30 days.	From 1 to 10 days.	From 11 to 20 days..	From 21 to 30 days.

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ART. 96. In cases in which the law prescribes a penalty composed of three distinct penalties, each one shall form a degree; the lightest of them the minimum, the next the medium, and the most severe the maximum degree.

Whenever the penalty prescribed does not have one of the forms specially provided for in this book, the degrees shall be distributed by applying by analogy the rules fixed.

CHAPTER V.

EXECUTION OF PENALTIES AND THEIR FULFILLMENT.

SECTION I.—*General provisions.*

ART. 97. No penalty shall be executed unless by virtue of final sentence.

ART. 98. Nor shall any penalty be executed in any other form than that prescribed by law, or with any other circumstances or incidents than those mentioned in its text.

Besides the provisions of the law, the prescriptions of the special regulations for the management of the institutions in which the penalties are to be undergone shall also be observed with regard to the character, time, and other circumstances of the labors, the relations of the convicts among themselves and with other persons, the relief they may receive, and their diet.

The regulations shall provide for the separation of the sexes in different institutions, or at least in different departments.

ART. 99. If a delinquent should become insane or an imbecile after final sentence should have been pronounced upon him, the execution thereof shall be suspended only with regard to the personal penalty, the provisions of the second and third paragraphs of No. 1 of article 8 being observed in the respective cases.

At any time when the delinquent shall recover his reason he shall complete his sentence, unless the penalty should have prescribed in accordance with the provisions of this code.

The proper provisions of this section shall also be observed if the insanity or imbecility should occur while the convict is undergoing his sentence.

SECTION II.—*Principal penalties.*

ART. 100. The penalty of death shall be executed by the garrote upon a scaffold.

The execution shall take place twenty-four hours after the notification of sentence, by day, in public, and in the place generally set aside for the purpose, or in the one the court may determine, when there are especial reasons therefor.

This penalty shall not be carried out upon religious or national holidays.

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ART. 101. Until there shall be a place provided in the jails for the public execution of the death penalty, the person sentenced thereto, who shall be dressed in a black cassock, shall be taken to the scaffold in the carriage provided for that purpose, or in a cart in the absence of the former.

ART. 102. The corpse of the person executed shall be exposed on the scaffold for four hours, after which it shall be buried; being delivered to his relatives or friends for this purpose if they should solicit it. The funeral must be held without display.

ART. 103. The penalty of death shall not be inflicted upon a woman while she is pregnant; nor shall she be notified of the sentence that has been imposed upon her until forty days after her delivery.

ART. 104. The penalties of *cadena perpetua* and *cadena temporal* shall be served in any of the places provided for such purpose, to the exclusion of the islands of Cuba and Porto Rico.

ART. 105. Those sentenced to *cadena temporal* or *cadena perpetua* shall labor for the benefit of the State; they shall always carry a chain at the ankle, hanging from the waist; they shall be employed in hard and painful labor and shall receive no assistance whatsoever from without the institutions.

Nevertheless, if the court, taking into consideration the age, health, condition, or any other personal circumstance of the delinquent, should believe that he should undergo his penalty in labors within the institution, it shall so declare in the sentence.

ART. 106. Those sentenced to *cadena temporal* or *cadena perpetua* can not be assigned to private works or to public works that are executed by business enterprise or by contracts with the Government.

ART. 107. A person condemned to *cadena temporal* or *cadena perpetua* who should have attained the age of 60 years before the passing of sentence, shall serve his sentence at a prison for serving the penalty of *presidio mayor*.

If he should attain said age while undergoing his sentence, he shall be transferred to the latter penal institution, in which he shall remain for the time prescribed in the sentence.

ART. 108. *Reclusión perpetua* and *reclusión temporal* shall be served in institutions within or without the islands of Cuba and Porto Rico.

Those condemned thereto shall be subject to forced labor for the benefit of the State within the precincts of the institution.

ART. 109. The penalties of *relegación perpetua* and *relegación temporal* shall be served without the islands of Cuba and Porto Rico, at the places provided therefor by the Government.

Those undergoing this sentence may devote themselves freely, under the surveillance of the authorities, to their profession or trade within the radius to which the limits of the penal institution extend.

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ART. 110. A person sentenced to expulsion shall be expelled from Spanish territory forever, if the sentence were perpetual, and for the term of the sentence if temporary.

ART. 111. The penalties of *presidio* shall be served in the institutions provided therefor, which are situated, those for *presidio mayor* within the islands of Cuba and Porto Rico and adjacent islands, and for *presidio correccional* within the islands of Cuba and Porto Rico respectively.

Those sentenced to *presidio* shall be subject to forced labor within the institution in which they are serving their sentence.

ART. 112. The product of the labor of those condemned to *presidio* shall be devoted:

1. To meet the civil liabilities of the prisoners arising from their crimes.

2. To indemnify the institution for the expenses they may occasion.

3. To provide them with some advantage or savings during their detention, should they deserve it, and to create a reserve fund, to be delivered to them upon their discharge from the *presidio*, or to their heirs should they die there.

ART. 113.[1] The penalties of *prisión* shall be served at the institutions provided for this purpose, which will be situated, those for *prisión mayor* within the islands of Cuba and Porto Rico and adjacent islands, and those for *prisión correccional* within the territorial jurisdiction of the audiencia (court) which imposed the sentence.

Those condemned to *prisión* shall not go outside of the institution in which they are undergoing their punishment, during the term of their sentence, and shall engage, for their own benefit, in such works as they may choose, provided they be compatible with the discipline established by the regulations. They shall be, nevertheless, subject to the labors of the institution until they shall have met their liabilities mentioned in Nos. 1 and 2 of the preceding article. Those having no trade or known and honest means of livelihood shall be also subject thereto.

ART. 114. Those sentenced to *confinamiento* shall be taken to a town or district situated in the adjacent islands, where they shall remain at complete liberty, under the surveillance of the authorities.

The courts, in designating the place where this penalty is to be served, shall take into consideration the trade, profession, or means of livelihood of the condemned person, in order that he may earn his living.

Those who, by reason of their age, health, and good conduct, should be fit for military service, may be, with their consent, assigned thereto by the Government.

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[1] See General Order No. 152, Headquarters Department of Porto Rico, September 29, 1899, p. 147.

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Those sentenced to banishment shall be precluded from entering the place or places designated in the sentence or within the radius therein designated, which shall include a distance of 25 kilometers at least and 250 kilometers at most from the place designated.

ART. 115. The person sentenced to public censure shall receive it in person at a sitting of the court, with open doors.

The person sentenced to private censure shall receive it in person at a sitting of the court and in the presence of the secretary, behind closed doors.

ART. 116. *Arresto mayor* shall be served in the public building provided for the purpose in the seats of judicial districts.

The provisions contained in the second paragraph of article 113 are applicable in their respective cases to those condemned to this penalty.

ART. 117. *Arresto menor* shall be served at the town halls or other public buildings, or in the house of the culprit himself, if the sentence shall so declare, without his being allowed to leave the same during the entire period of the sentence.

Apprentices, serfs (*colonos*), and slaves shall suffer the penalty at the house of their master, patron, or owner on the same terms as those expressed in the preceding paragraph.

SECTION III.—*Accessory penalties.*

ART. 118. A person sentenced to degradation shall, at a public sitting of the court, be stripped by a bailiff of his uniform, robes of office, insignia, and decorations.

The stripping off shall be carried out at the command of the presiding judge, who shall order it, in the following manner: "Strip (*the name of the person sentenced*) of his insignia and decorations, to wear which the law declares him unworthy. The law degrades him because he has degraded himself."

TITLE IV.

CIVIL LIABILITY.

ART. 119. The civil liability established in Chapter II, Title II, of this book includes: (1) Restitution, (2) reparation for the damage caused, (3) indemnification for losses, (4) enforced manumission.

ART. 120. The restitution of the thing itself must be made, if possible, with payment for deteriorations or diminutions of value, to be appraised by the court.

Restitution shall be made, even though the thing may be in the possession of a third person who had acquired it in a legal manner, reserving, however, his action against the proper person.

This provision is not applicable to a case in which the third person has acquired the thing in the manner and with the requisites established by law to make it unrecoverable.

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ART. 121. The reparation shall be made by the appraisal of the amount of damage by the court, taking into consideration the value of the thing whenever possible, and the value as a keepsake to the party aggrieved.

ART. 122. Indemnification for losses shall include not only those which may have been caused the aggrieved party, but also those that may have been inflicted upon his family or upon a third person by reason of the crime.

The courts shall regulate the amount of such indemnification upon the same terms as prescribed for the reparation of damage in the foregoing article.

ART. 123. The obligation to make restitution, to repair the damages or indemnify the losses, is transmitted to the heirs of the person liable.

The action to demand restitution, reparation, or indemnification is also transmitted to the heirs of the person injured.

ART. 124. If there are two or more persons civilly liable for a crime or misdemeanor, the courts shall determine the share for which each shall be liable.

ART. 125. Notwithstanding the provision contained in the preceding article, the principals, accomplices, and accessories, each within their respective class, shall be held jointly liable among themselves for their shares, and subsidiarily for those of the other persons liable.

The subsidiary liability shall be enforced, first against the property of the principals, next against that of the accomplices, and finally against that of the accessories.

In cases in which the joint liability has been enforced as well as the subsidiary liability, the right of action is reserved by the person who has paid, against the others for the shares due from each.

ART. 126. Whosoever may have gratuitously shared in the proceeds of a crime or misdemeanor is obliged to make indemnification in so far as he may have participated therein.

TITLE V.

PENALTIES INCURRED BY THOSE WHO VIOLATE THEIR SENTENCE, AND BY THOSE WHO COMMIT A NEW CRIME WHILE SERVING SENTENCE.

CHAPTER I.

PENALTIES INCURRED BY THOSE WHO VIOLATE THEIR SENTENCE.

ART. 127. Persons serving a sentence who should violate it, shall suffer an aggravation of their punishments, subject to the provisions of the following rules:

1. Those sentenced to *cadena* or *reclusión* shall complete their respective terms, and be made to suffer, during a space of time not exceeding three years, the greatest deprivations authorized by the regulations, and shall be assigned to the most painful tasks.

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If the penalty should be perpetual, they shall not enjoy the benefit granted by article 27 until after having served the aggravation of penalty imposed upon them.

If the penalty should be temporary and the aggravation of penalty could not be served within the term fixed in their original sentence, they shall continue subject thereto until the period of the aggravation has expired.

2. Those sentenced to *relegación* or expulsion shall be condemned to *prisión correccional* for a period not to exceed three years, which must be served, in case of those sentenced to *relegación*, at the place of *relegación* if possible, and, otherwise, at the nearest possible place thereto; and those sentenced to expulsion, at one of the penal institutions of the Kingdom.

When these sentences have been served, they shall serve out their original sentences.

3. Those sentenced to *presidio*, *prisión*, or *arresto* shall suffer an increase of the said penalties, not to exceed the one-sixth part of the time still lacking for the completion of their original sentence.

4. Those sentenced to *confinamiento* shall be condemned to *prisión correccional* not to exceed two years; and after this penalty is served, they shall serve out that of *confinamiento*.

5. Persons banished shall be condemned to *arresto mayor*, after serving which they shall serve out their term of banishment.

6. Those disqualified from office, from the right of suffrage, profession, or trade, who shall obtain or exercise the same shall be condemned to *arresto mayor* and a fine of from 250 to 2,500 pesetas, if their act should not constitute a special crime.

7. Those suspended from office, the right of suffrage, profession, or trade, who shall nevertheless practice it, shall suffer an increase for a period equal to that of the original sentence and a fine of from 150 to 1,500 pesetas.

8. Those placed under the surveillance of the authorities who fail to observe the rules they ought to observe shall be condemned to *arresto mayor*, having completed which term they shall continue subject to the surveillance of the authorities until the expiration of such penalty.

Art. 128. The aggravations prescribed in the preceding article with regard to those deprived of their liberty shall not be applied to those who escape from penal institutions or the stations thereof without violence, intimidation, or resistance, without breaking doors or windows, walls, roofs, or floors, without the use of picklocks or false keys, without scaling walls, and without an understanding with other convicts or attendants of the institution.

The violation of a sentence without one or more of these attendant circumstances shall be punished with one-fourth of the penalty respectively prescribed in article 127.

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CHAPTER II.

PENALTIES INCURRED BY THOSE WHO COMMIT ANOTHER OFFENSE AFTER HAVING BEEN CONDEMNED BY FINAL SENTENCE, EITHER BEFORE OR WHILE SERVING IT.

ART. 129. Those who should commit any crime or misdemeanor after having been condemned by a final sentence before beginning to serve it, or during the time of their punishment, shall be punished in accordance with the following rules:

1. The maximum degree of the penalty prescribed by law for the new crime or misdemeanor shall be imposed upon them.

2. The courts shall observe, in so far as applicable to this case, the provisions contained in article 86 and rule 1 of article 87 of this Code.

3. The prisoners mentioned in this article shall be pardoned at the age of 70 years if they should already have served out their original sentences, or when they shall have completed their terms after attaining said age, unless they should not be worthy of this act of grace, on account of their bad conduct or any other circumstances.

TITLE VI.

EXTINCTION OF PENAL LIABILITY.

ART. 130. Penal liability is extinguished—

1. By the death of the culprit always, in so far as personal penalties are concerned; and with regard to pecuniary liabilities, only when no final sentence had been imposed at the time of his death.

2. By the completion of his term.

3. By amnesty which completely extinguishes the penalty and all its effects.

4. By pardon.

A person freed by a pardon can not reside in the place of residence of the offended party without his consent during the time that the sentence would have lasted had it not been for the pardon, said pardon granted being otherwise void.

5. By condonation granted by the offended party, should the penalty have been imposed for crimes in which public prosecution can not be instituted.

6. By prescription of the crime.

7. By prescription of the penalty.

ART. 131. Crimes prescribe twenty years after their commission, when the law fixes the penalty of death or of *cadena perpetua* for the crime.

After fifteen years, when the penalty fixed is any other corporal penalty.

After ten years, when the penalties fixed are correctional.

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The crimes of calumny and contumely are excepted, the first of which shall prescribe after one year and the second after six months.

Misdemeanors prescribe two months after their commission.

When the penalty prescribed is a compound penalty, the higher penalty shall be observed in the application of the rules contained in the first, second, and third paragraphs of this article.

The term of the prescription shall commence to run from the day on which the crime was committed; and if not known at the time, from the day of its discovery and the beginning of the judicial proceedings for investigation and punishment.

This prescription shall be interrupted from the commencement of the proceedings against the culprit, and the term of prescription shall commence to run again from the time when such proceedings terminate without the culprit being convicted or the proceedings have stopped, unless it be through the default of the culprit being tried.

Art. 132. The penalties imposed by final sentence prescribe:

Those of death and *cadena perpetua* after twenty years.

The remaining corporal penalties after fifteen years.

The correctional penalties after ten years.

Light penalties after one year.

The term of this prescription will begin to run from the day on which the culprit was personally notified of the final sentence; or from the day of his breaking the sentence, if he had begun to serve it.

It shall be interrupted, the time which has elapsed remaining without effect, in case the culprit should present himself or be captured, if he should have gone to a foreign country with which Spain may not have celebrated extradition treaties; or if, although she should have them, his crime should not be included in their provisions; or if he should commit a new crime before completing the term of the prescription—without prejudice, however, to the latter beginning to run anew.

Art. 133. Civil liability arising out of crimes or misdemeanors shall be extinguished in the same manner as other obligations in accordance with the rules of civil law.

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BOOK II.

CRIMES AND THEIR PENALTIES.

TITLE I.

CRIMES AGAINST THE EXTERNAL SECURITY OF THE STATE.

CHAPTER I.

THE CRIME OF TREASON.

ART. 134. A Spaniard who shall induce a foreign power to declare war on Spain, or shall plot with it to the same end, shall be punished with the penalty of *cadena perpetua* to death if war should actually be declared, and otherwise with the penalty of *cadena temporal* in its medium degree to that of *cadena perpetua*.

ART. 135. The following shall be punished with the penalty of *cadena perpetua* to death:

1. A Spaniard who shall facilitate the enemy's entrance into the Kingdom, the capture of a fortified place, military post, national vessel, or stores of military or food supplies.

2. A Spaniard who shall seduce Spanish troops or troops in the service of Spain to go over to the enemy's ranks or to desert their flag while in the field.

3. A Spaniard who shall recruit people in Spain to make war upon the country under the flag of a hostile power.

Frustrated crimes of the character specified in the preceding numbers shall be punished as though consummated, and the attempts shall be punished with the penalty next lower by one degree.

ART. 136. The following shall be punished with the penalty of *cadena temporal* in its maximum degree to death:

1. A Spaniard who shall take up arms against his country under hostile flags.

2. A Spaniard who shall recruit people in Spain for the service of a hostile power in case such recruits were not to take a direct part in the war against Spain.

3. A Spaniard who shall furnish troops of a hostile power with money, arms, transports, articles or munitions of war, food, or other means, direct and effectual, for carrying on hostilities against Spain, or who shall favor the progress of the hostile arms in a manner not specified in the preceding article.

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4. A Spaniard who shall furnish the enemy with topographical maps, or plans of fortifications, documents, or information which shall directly lead to the same end of committing hostilities on Spain or favoring the progress of the hostile arms.

5. A Spaniard who in time of war shall prevent the national troops from receiving the assistance referred to in No. 3 or the data and information referred to in No. 4.

ART. 137. Conspiracy to commit any of the crimes mentioned in the three preceding articles shall be punished with the penalty of *presidio mayor*, and the proposition to commit the said crimes with that of *presidio correccional.*

ART. 138. A foreigner residing in Spanish territory who shall commit any of the crimes specified in the preceding article shall be punished with the penalty next lower than that fixed therein, reserving the provisions of treaties or international law relating to diplomatic officials.

ART. 139. Those who shall commit the crimes specified in the preceding articles against a power allied to Spain, in the case of said power being in the field against the common enemy, shall be punished with the penalties lower by one degree than those respectively prescribed.

ART. 140. The ministers of the Crown shall incur the penalty of *cadena perpetua* to death who, in violation of article 55 of the constitution, shall authorize a decree to any of the following ends:

1. Alienating, ceding, or exchanging any part of the Spanish territory.

2. Authorizing the entrance of foreign troops into the Kingdom.

3. Ratifying treaties of offensive alliance, which may have brought about war between Spain and another power.

Art. 141. The persons mentioned in the foregoing article shall be punished with the penalty of *cadena temporal* in its medium degree to *cadena perpetua*, who, in violation of article 55 of the constitution, shall authorize a decree:

1. Ratifying treaties of offensive alliance which may not have brought about war between Spain and another power.

2. Ratifying treaties in which the stipulation is made to give subsidies to a foreign power.

CHAPTER II.

CRIMES THAT ENDANGER THE PEACE OR INDEPENDENCE OF THE STATE.

ART. 142. The ecclesiastical minister who, in the performance of his office, shall publish or enforce bulls, briefs, or dispatches from the Holy See, or other provisions or declarations that attack the peace or independence of the State, or that oppose the observance of its laws, or encourage their nonobservance, shall incur the penalty of temporary expulsion.

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Any layman committing such acts shall incur the penalty of *prisión correccional* in its minimum and medium degrees, and a fine of from 625 to 6,250 pesetas.

ART. 143. Any person who shall introduce, publish, or enforce within the Kingdom any order, provision, or document emanating from a foreign government, that attacks the independence or security of the State, shall be punished with the penalties of *prisión correccional* in its minimum and medium degrees, and a fine of from 625 to 6,250 pesetas, unless such crime directly produces others of greater gravity, in which case he shall be punished as the principal therein.

Art. 144. If any of the crimes mentioned in the two foregoing articles should be committed by any official of the State taking advantage of his character or duties, there shall be imposed upon him, in addition to the penalties established in said articles, that of perpetual absolute disqualification.

ART. 145. He who by unlawful acts or not duly authorized should provoke or furnish a pretext for a declaration of war against Spain on the part of another power, or should expose Spaniards to annoyance or reprisals on their persons or property, shall be punished with the penalty of *reclusión temporal* if he be a State official, and otherwise with that of *prisión mayor*.

If the war be not actually declared, or the reprisals or annoyances do not take place, the respective penalties shall be imposed in the next lower degree.

ART. 146. The penalty of *reclusión temporal* shall be imposed on any person violating a truce or armistice agreed to between the Spanish nation and a hostile nation, or between their belligerent forces, land or naval.

ART. 147. A public official who, taking advantage of his office, should in any way not specifically mentioned in this chapter endanger the dignity or interests of the Spanish nation, shall be punished with the penalties of *prisión mayor* and perpetual disqualification from the office he may hold.

ART. 148. He who, without sufficient authorization, shall raise troops within Spain for the service of a foreign nation for any object or purpose whatsoever, whatever be the nation against which hostility be contemplated, shall be punished with the penalties of *prisión mayor* and a fine of from 12,500 to 125,000 pesetas.

He who, without sufficient authorization, should send out vessels for privateering shall be punished with the penalties of *reclusión temporal* and a fine of from 6,250 to 62,500 pesetas.

ART. 149. He who in time of war holds correspondence with the hostile country or territory occupied by its troops shall be punished:

1. With the penalty of *prisión mayor*, if such correspondence is carried on by ciphers or codes agreed on between the parties.

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2. With that of *prisión correccional*, if it be carried on in the usual form and the Government should have forbidden it.

3. With that of *reclusión temporal*, if there were given therein notice or information of which the enemy could take advantage, whatever be the form of such correspondence, and even though the Government should not have forbidden it.

The same penalties shall be incurred by the person committing the crimes mentioned in this article, even though he should send the correspondence through friendly or neutral territory in order to elude the law.

If the culprit should intend to help the enemy with his notices or information, the provisions of article 135 and 136 shall be observed.

ART. 150. Any Spaniard guilty of an attempt to enter a hostile country, if the Government should have prohibited it, shall be subject to the penalties of *arresto mayor* and a fine of from 375 to 3,750 pesetas.[1]

CHAPTER III.

CRIMES AGAINST INTERNATIONAL LAW.

ART. 151. He who should kill a monarch or the head of another State residing in Spain, shall be punished with the penalty of *reclusión temporal* in its maximum degree, to death.

He who should inflict serious wounds upon the said persons shall be punished with the penalty of *reclusión temporal*, and if the wounds were slight with that of *prisión mayor*.

Those who should commit any other attempt at crime not specifically mentioned in the foregoing paragraphs, against the same persons shall incur the last-named penalty.

ART. 152. He who should violate the personal immunity or the domicile of a monarch or head of another State received in Spain in their official character, or who shall violate that of a representative of another power, shall be punished with the penalty of *prisión correccional*.

If the crimes mentioned in this and in the preceding article should have no reciprocal penalties fixed therefor in the laws of the nation to whom the persons offended belong, the penalty shall be imposed upon the delinquent which would be proper for the crime, in accordance with the provisions of this code, if the person offended should not have had the official character mentioned in the foregoing paragraph.

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[1]See Gen. Orders No. 109, Headquarters Department of Porto Rico, July 31, 1899 page 143.

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Chapter IV.

CRIMES OF PIRACY.

Art. 153. The crime of piracy committed against Spaniards or the subjects of another nation not at war with Spain shall be punished with the penalty of *cadena temporal* to *cadena perpetua.*

If the crime should be committed against nonbelligerent subjects of another nation at war with Spain it shall be punished with the penalty of *presidio mayor.*

Art. 154. Those who commit the crimes referred to in the first paragraph of the preceding article shall incur the penalty of *cadena perpetua* to death; and those who commit the crimes referred to in the second paragraph of the same article that of *cadena temporal* to *cadena perpetua:*

1. Provided that they have taken any vessel by boarding or firing upon her.
2. Provided that such crime should be accompanied by assassination, homicide, or by any of the physical injuries inflicted on persons specified in articles 427 and 428 and in numbers 1 and 2 of article 429.
3. Provided that it was accompanied by any of the outrages against chastity specified in Chapter II, Title IX, of this book.
4. Provided that the pirates should have abandoned any persons without means of saving themselves.
5. In every case, the captain or leader of the pirates.

TITLE II.

CRIMES AGAINST THE CONSTITUTION.

Chapter I.

CRIMES OF LÈSE-MAJESTÉ, AGAINST THE CORTES, THE COUNCIL OF MINISTERS, AND AGAINST THE FORM OF GOVERNMENT.

Section I.—*Crimes of lèse-majesté.*

Art. 155. Upon any person who shall kill the King there shall be imposed the penalty of *reclusión perpetua* to death.

Art. 156. If the crime referred to in the foregoing article be frustrated or attempted, it shall be punished with the penalty of *reclusión temporal* in its maximum degree to death.

The conspiracy to execute with that of *reclusión temporal.*

And the proposition with that of *prisión mayor.*

Art. 157. The following shall be punished with the penalty of *reclusión temporal* to *reclusión perpetua:*

1. Those who shall deprive the King of his personal liberty.

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2. Those who shall force him, by violent means or by grave intimidation, to perform any act contrary to his will.

3. Those who shall cause him grave physical injuries not included in the first paragraph of article 156.

ART. 158. If the violence, intimidation, or physical injuries referred to in numbers 2 and 3 of the preceding article be not grave, the penalty of *reclusión temporal* shall be imposed on the guilty person.

ART. 159. The penalty of *reclusión temporal* shall likewise be imposed:

1. Upon a person who shall outrage or threaten the King in his presence.

2. Upon a person who shall enter the King's residence with violence.

ART. 160. Any person who shall threaten or outrage the King publicly in writing, outside of his presence, shall be punished with the penalties of *prisión mayor* and a fine of from 1,250 to 12,500 pesetas.

Outrages and threats couched in any other form shall be punished, if they should be grave, with the penalty of *arresto mayor* in its medium degree to *prisión correccional* in its minimum degree, and if they should be light, with the penalty of *arresto mayor* in its medium degree to *prisión correccional* in its minimum degree.

ART. 161. He who shall kill the immediate successor to the Crown or the Regent of the Kingdom shall be punished with the penalty of *reclusión temporal* in its maximum degree to death.

If the crime be frustrated or attempted, with the penalty of *reclusión temporal* to death.

The conspiracy with that of *prisión mayor* in its medium and maximum degrees.

And the proposition with that of *prisión correccional* in its maximum degree to *prisión mayor* in its minimum degree.

ART. 162. If the crimes mentioned in the preceding articles of this section, with the exception of those comprised in the last article, should be committed against the immediate successor to the Crown, the consort of the King or the Regent of the Kingdom, they shall be punished with the penalties lower by one degree than those prescribed therein.

SECTION II.—*Crimes against the Cortes and its members and against the council of ministers.*

ART. 163. In case there should be a vacancy of the Crown, or in case the King should be disabled in any manner whatsoever from governing the nation, those members of the royal family, ministers, authorities, and other civil or military officials who shall disobey the Regent after he has taken the oath that the constitution requires, or the council of ministers during the time that they are provisionally governing the Kingdom in accordance therewith, shall be punished

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with the penalty of *relegación temporal* in its maximum degree to *relegación perpetua.*

ART. 164. The penalty of *confinamiento* shall be incurred by those who, forming part of an armed force, shall collectively address petitions to either of the co-legislative bodies, even though such petitions should not be personally presented.

The same penalty shall be incurred by those who, forming part of an armed force, should present them individually, but not according to the laws of their organization, in so far as they have relation thereto.

The penalties prescribed in this article shall be respectively imposed in their maximum degree on those who hold a command in the armed force.

ART. 165. The following shall also incur the penalty of *confinamiento:*

1. Those who shall outrage or threaten a senator or deputy on account of the opinions he may have expressed or the votes cast in the senate or chamber of deputies.

2. Those who use force, intimidation, or serious threat to prevent a senator or deputy from attending the co-legislative body to which he belongs, or who by the same means should coerce the free declaration of his opinions or the casting of his vote.

In the cases provided for in the two preceding numbers of this article, a challenge to fight a duel shall be considered as a serious threat.

ART. 166. If the outrage, threat, force, or intimidation referred to in the preceding article were not serious, the delinquent shall suffer the penalty of banishment and a fine of from 325 to 3,250 pesetas.

ART. 167. The penalties prescribed in the three preceding articles shall be imposed in their maximum degree if the guilty persons are recidivists.

ART. 168. The public official who, when the Cortes is in session, should, without due permission of the respective legislative body, detain, arrest, or commit for crime any senator or deputy, unless he had been taken *in flagrante*, shall incur the penalty of temporary special disqualification.

The same penalty shall be incurred by the judge who, having passed sentence on a senator or deputy, in a trial instituted without the permission referred to in the preceding paragraph, should carry out said sentence without the legislative body to which the accused belongs having authorized its execution.

There shall also be punished with the same penalty of temporary special disqualification the administrative or judicial officials who should detain a senator or deputy *in flagrante*, and fail to report it to the Cortes immediately if in session; or who should fail likewise

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to report to the Cortes as soon as it assembles the arrest of any of its members which they may have ordered, or the proceedings they may have instituted against such members during the interval of the sessions.

SECTION III.—*Crimes against the form of Government.*

ART. 169. Persons who shall execute any kind of acts or deeds directly tending to obtain by force any of the following ends, shall be considered guilty of crimes against the form of Government established by the constitution:

1. To substitute for the constitutional monarchical Government an absolute monarchical or republican government.

2. To deprive, in whole or in part, the King, the Regency, or the Cortes of the privileges and powers vested in them by the constitution.

3. To change the legitimate order of the succession of the Crown, or to deprive the dynasty of the rights granted it by the constitution.

4. To deprive the council of ministers of the right to govern the Kingdom provisionally until the Regent takes the oath in accordance with the constitution.

ART. 170. The following shall also commit crimes against the form of Government:

1. Those who in any kind of public meetings or places of numerous assemblage shall raise cheers or other outcries that shall provoke acclamations tending to the accomplishment of any of the purposes specified in the preceding article.

2. Those who in said meeting and places make speeches or read or distribute printed matter or carry emblems and banners, tending to the realization of the objects mentioned in the preceding article.

ART. 171. Public officials who should execute any mandate or order issued by the King in the exercise of his constitutional authority without being signed by the proper minister shall also be considered guilty of a crime against the form of Government.

ART. 172. Those who, publicly and in open hostility, should rise in arms, in order to perpetrate any of the crimes provided for in article 169, shall be punished with the following penalties:

1. Those who may have instigated, supported, or directed said rising or who appear as its principal leaders, with the penalty of *reclusión temporal* in its maximum degree to death.

2. Those in charge of a subaltern command therein, with that of *reclusión temporal* to death, should they be persons filling civil or ecclesiastical office, or if there should have been any engagement between the forces under their command and the public forces loyal to the government, or if their forces should have caused ravages among the properties of private persons, of towns, or of the State, or have cut the telegraph wires or the railroad lines, or have committed any

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acts of gross violence against individuals, or exacted contributions, or diverted public funds from their lawful purpose.

With the exception of these cases, the penalty of *reclusión temporal* shall be imposed on the culprit.

3. The mere participants in the rising, with that of *prisión mayor* in its medium degree to *reclusión temporal* in its minimum degree, in the cases provided for in the first paragraph of the preceding number, and with that of *prisión mayor* in its full limit, in the cases mentioned in the second paragraph of the same number.

ART. 173. Those who, without rising in arms and in open hostility against the Government, shall commit any of the crimes provided for in the said article 169 shall be punished with the penalty of *prisión mayor*.

ART. 174. He who shall commit any of the crimes included in article 170, shall be punished with the penalty of banishment.

ART. 175. A public official who is responsible for the crime mentioned in article 171, shall suffer the penalty of temporary special disqualification.

SECTION IV.—*Provisions common to the three preceding sections.*

ART. 176. The provisions contained in the articles included in this chapter are understood without prejudice to the prescriptions of other articles of this code which fix a higher penalty for any one of the acts punished in the former.

CHAPTER II.

CRIMES COMMITTED ON THE OCCASION OF THE EXERCISE OF THE INDIVIDUAL RIGHTS GUARANTEED BY THE CONSTITUTION.

SECTION I.—*Crimes committed by individuals on the occasion of the exercise of individual rights guaranteed by the constitution.*

ART. 177. The following are not peaceful meetings or demonstrations:

1. Those which are held in violation of the police rules of a general or permanent character of the locality where the meeting or demonstration takes place.

2. Open-air meetings or political demonstrations held at night.

3. Meetings or demonstrations where a certain number of people assemble with firearms, lances, sabres, swords, machetes, or any other similar weapons.

4. Meetings or demonstrations which are held for the purpose of committing any of the crimes punished by this code, or those where,

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during the meeting, any of the crimes punished in Title III, Book II, hereof are committed.

ART. 178. The organizers and leaders of any meeting or demonstration that is held without written notice thereof having been given to the authorities twenty-four hours in advance, stating the object, time, and place of the meeting, shall incur the penalty of *arresto mayor* and a fine of from 325 to 3,250 pesetas.

ART. 179. The organizers and leaders of any meeting or demonstration included in any of the cases of article 177 shall incur the penalty of *prisión correccional* in its minimum and medium degrees, and a fine of from 325 to 3,250 pesetas.

ART. 180. In the cases of the preceding articles, if the meeting or demonstration shall not have actually taken place, the personal penalty shall be the next lower in degree.

ART. 181. For the enforcement of the provisions of the preceding articles, as leaders of the meeting or demonstration shall be considered those who, by the speeches they may have delivered thereat, or by the printed matter which they may have published or distributed at the same, by the mottoes, flags, or other emblems displayed, or by any other means, appear as instigating the proceedings.

ART. 182. Those merely attending the meetings or demonstrations mentioned in Nos. 1 and 2 and the first case of No. 4 of article 177, shall be punished with the penalty of *arresto mayor*.

ART. 183. The organizers, leaders, and persons present at any meeting or demonstration whatsoever shall respectively incur the penalties next higher in degree, if they fail to disperse it upon a second notice to do so from the authorities or their agents.

ART. 184. Those who assemble at meetings or demonstrations, carrying firearms, lances, sabres, swords, machetes, or any other similar weapons, shall be punished with *prisión correccional*, in its minimum and medium degree.

ART. 185. Those attending meetings or demonstrations who, during its progress, shall commit any of the crimes punished in this code, shall incur the penalty corresponding to the crime they commit, and may be arrested at once by the authorities or their agents, or in their absence by any other person attending.

ART. 186. The following are illegal associations:

1. Those which by their purpose or circumstances are contrary to public morals.

2. Those whose object it is to commit any of the crimes punished in this code.

ART. 187. The following persons shall incur the penalty of *prisión correccional* in its minimum and medium degrees, and a fine of from 325 to 3,250 pesetas:

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1. The founders, directors, and presidents of associations which may be organized and are included in any of the numbers of the preceding article.

If the association should not have been organized, the personal penalty shall be that next lower in degree.

2. The founders, directors, and presidents of associations which may be organized without notice to the local authorities of their purpose and by-laws eight days before their first meeting, or of the place of the meeting twenty-four hours before the respective meeting, even if the first place selected for the meeting should later be changed for another.

3. The directors or presidents of associations who do not admit the authorities or their agents or do not give them the right of attending the meetings.

4. The directors or presidents of associations who do not stop meetings on the second notice to do so of the authorities or their agents.

ART. 188. The following shall incur the penalty of *arresto mayor:*

1. The individual members of the associations mentioned in article 186.

If the association should not have been organized, the penalties shall be public censure and a fine of from 325 to 3,250 pesetas.

2. The individual members who commit the crime mentioned in No. 3 of the foregoing article.

3. The individual members who do not withdraw from the meeting on the second notice given by the authorities or their agents that the meeting must be suspended.

ART. 189. The founders, directors, presidents, and members of associations who again hold a meeting after its having been suspended by the authorities or their agents, provided that the judicial authority has not revoked the suspension ordered, shall incur the penalties next higher in degree than those respectively prescribed in the last two articles.

ART. 190. Those who establish and direct institutions of learning in violation of the laws in force on the subject shall incur the penalty of *arresto mayor* and a fine of from 500 to 5,000 pesetas.

ART. 191. The following shall incur the penalty of *arresto mayor:*

1. The authors, directors, editors, and printers in their respective cases of secret publications.

By such shall be considered those which do not bear the printer's name upon the copies printed or which bear a fictitious one.

2. The directors, editors, or printers (also in their respective cases) of the periodical publications who have not complied with the precepts of the special law of the press.

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SECTION. II.—*Crimes committed by public officials against the exercise of individual rights guaranteed by the constitution.*

ART. 192. A public official who, without the authorization of law, shall impose any punishment equivalent to personal punishment, by arrogating judicial powers to himself, shall incur:

1. The penalty of temporary absolute disqualification, if the punishment imposed were equivalent to a corporal penalty.

2. The penalty of suspension in its medium and maximum degrees, if it were equivalent to a correctional penalty.

3. The penalty of suspension in its minimum and medium degrees, if it were equivalent to a light penalty.

ART. 193. If the punishment arbitrarily imposed should have been carried out, in addition to the penalties prescribed in the preceding article, the punishment imposed shall be inflicted on the guilty official and in the same degree.

If the punishment should not have been carried out that next lower in degree shall be imposed upon him, if the former should not have gone into effect through a cause independent of his will.

ART. 194. If the penalty arbitrarily imposed should have been a pecuniary one the guilty official shall be punished:

1. With that of temporary absolute disqualification and a fine of an amount equal to three times the amount thereof if it should have been exacted.

2. With that of suspension in its medium and maximum degrees and a fine of from one-half to an equal amount thereof if the penalty had not been exacted through a cause independent of his will.

3. With that of suspension in its medium and minimum degrees if it should not have been exacted by reason of the voluntary revocation of the said official.

ART. 195. The authorities and officials, civil and military, who, even though the constitutional guaranties may be suspended, should have established a penalty different from that previously prescribed by law for any kind of crimes, and those who enforce such penalties, shall respectively incur, according to the facts, the penalties prescribed in the three foregoing articles.

ART. 196. The judicial authority who unduly remits a criminal case to another military or administrative authority or official which illegally claims it, shall be punished with the penalty of suspension in its medium and maximum degrees.

The military or administrative authority or official who should persist in his demand for the unlawful remission of the case and should compel the judicial authority to comply after the latter had pointed out the illegality of such a demand, shall be punished with the penalty next higher in degree.

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ART. 197. If the person of the criminal shall also have been demanded and surrendered, the penalties shall, in their respective cases, be those next higher in degree than those prescribed in the preceding article.

ART. 198. The public official who, unless it be by reason of a crime, should detain a person without being authorized to do so by law, the constitutional guaranties not being suspended, shall incur the penalty of a fine of from 325 to 3,250 pesetas, if the detention should not have exceeded three days; the penalty of suspension in its minimum and medium degrees, if it should have exceeded said period and not been more than fifteen days; that of suspension in its maximum degree to temporary absolute disqualification in its medium degree, if it should not have been less than fifteen days nor have reached one month; that of *prisión correccional* in its maximum degree to *prisión mayor* in its minimum degree, if it should have been more than one month and should not have exceeded a year; and that of *prisión mayor* in its medium degree to *reclusión temporal* to its full limit, if the detention should have exceeded one year.

ART. 199. The public official who should delay complying with a judicial order to release a person imprisoned or detained whom he may have under his control, shall be punished with the penalties next higher in degree than those prescribed in the preceding article in proportion to the duration of the delay.

ART. 200. The public official who, not being a judicial authority and the constitutional guaranties not having been suspended, shall detain a person for a crime and shall not deliver him to the judicial authority within the twenty-four hours after the detention took place, shall respectively incur the penalties next higher in degree than those prescribed in the said article 198.

ART. 201. The following shall also incur the same penalties in their respective cases:

1. The warden of a jail or any other public official who shall receive as a prisoner any person whatsoever and shall allow twenty-four hours to elapse without informing the judicial authority thereof.

2. The warden of a jail or other public official who does not liberate a prisoner who should not have been committed to prison within the seventy-two hours next after due notice of his detention should have been given to the judicial authorities.

3. The warden of a jail or other public official who shall receive a person in the capacity of a prisoner, unless by virtue of a judicial order, or shall keep him in prison after seventy-two hours have elapsed from his having been received in such capacity or having been notified of the warrant for his commitment, unless during that time the prisoner should also have been notified of the writ ratifying the former.

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4. The warden of a jail or any other public official who shall conceal a prisoner from the judicial authority.

5. The warden of a jail or other penal institution who, without an order of the judicial authority, shall have placed a prisoner or one under sentence either in solitary confinement or in a place different from that where he belongs.

6. The warden of a jail or head of a penal institution who should impose upon prisoners or those under sentence improper deprivations or treat them with unnecessary severity.

7. The warden of a jail or the head of a penal institution who should deny to a person detained or a prisoner, or to whomsoever may represent him, a certificate of his detention or imprisonment, or who should not forward any petition relative to his release.

8. The head of a penal institution who should retain a person in the institution after having received official notice of his pardon or after his term of imprisonment had expired.

The provisions of Nos. 1, 2, 3, and 5 shall not be applicable when the warden of a jail or head of a penal institution or public official acts in compliance with an order of the civil or military authority issued in the exercise of legal powers.

ART. 202. The following shall incur the penalty of suspension in its minimum and medium degrees:

1. The judicial authority who should neither set at liberty nor commit a prisoner by a warrant, stating the reasons therefor (*auto motivado*), within 72 hours following that in which he may have been placed at his disposal.

2. The judicial authority who shall not ratify a warrant of commitment or declare it null within 72 hours after it may have been issued.

3. The judicial authority who, with the exception of the cases mentioned in the two preceding numbers, shall detain in the capacity of prisoner a person whose release is proper.

4. The judicial authority who should improperly order or prolong the solitary confinement of a prisoner.

5. The clerk or secretary of a superior or inferior court who shall permit the term referred to in No. 1 of this article to elapse without notifying the prisoner of the warrant committing him to prison or the writ terminating his detention.

6. The secretary or clerk of a superior or inferior court who shall unduly delay the notification of the warrant or writ raising solitary confinement or setting a prisoner at liberty.

7. The clerk or secretary of a superior or inferior court who shall delay informing them of any petition of a person detained or imprisoned, or of his representative, relating to his freedom.

If the delay referred to in the foregoing numbers shall have lasted more than one month and shall not have exceeded three, the culprits

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shall incur, in their respective cases, the penalty of suspension in its maximum degree to temporary absolute disqualification in its medium degree and a fine of from 325 to 3,250 pesetas; and if it should have exceeded said period, that of temporary absolute disqualification in its maximum degree to perpetual absolute disqualification and a fine of from 1,250 to 12,500 pesetas.

ART. 203. The following shall incur the penalties of suspension in its minimum and medium degrees and a fine of from 325 to 3,250 pesetas:

1. The public official who, not being a judicial authority and the constitutional guaranties not having been suspended, shall enter the domicile of a Spaniard or foreigner without his consent, except in the cases and in the manner expressly prescribed by law.

2. The public official who, without being authorized by law and not being a judicial authority, and the constitutional guaranties likewise not being suspended, shall make a search through the papers of a Spaniard or of a foreigner and the effects which may be found in his domicile, unless their owner should have given his consent.

If he should not return at once to the owner the papers and effects thus examined immediately after making the search, the penalty shall be that next higher in degree.

If the crimes punished in the two preceding numbers should be committed at night, the penalties shall be those of suspension in its medium and maximum degrees and a fine of from 625 to 6,250 pesetas, reserving the provisions of the second paragraph of No. 2, with regard to which the penalty shall be that next higher in degree than those prescribed therein.

ART. 204. The public official who, on the occasion of a search through the papers and effects of a person, shall commit any other unjust vexation against persons or wanton damage to their property, shall likewise incur the penalties of suspension in its minimum and medium degrees and a fine of from 325 to 3,250 pesetas.

If he should remove such property and appropriate it to himself, he shall be punished as guilty of the crime of robbery with violence against the person.

ART. 205. The judicial authority who, with the exception of the cases prescribed and in violation of the forms established by law, and the constitutional guaranties not being suspended, should enter by night the domicile of a Spaniard or foreigner without his consent, shall incur the penalty of suspension in its minimum and medium degrees and a fine of from 325 to 3,250 pesetas.

ART. 206. The same penalty shall be incurred by any authority who shall make an examination of papers and effects in the domicile of a Spaniard or foreigner, unless in the presence of the interested person or in that of a member of his family, or, in their absence, in that of two witnesses from the same locality.

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ART. 207. The public official who, not being a judicial authority, shall detain private correspondence intrusted to the mails shall incur a fine of from 325 to 3,250 pesetas.

ART. 208. The public official who, not being a judicial authority, shall open private correspondence intrusted to the mails shall incur a fine of from 325 to 3,250 pesetas.

The public official who shall open a telegraphic message intrusted to him for delivery at a domicile shall incur the same penalty.

ART. 209. The public official who shall extract letters from the mails shall be punished with the penalty of a temporary absolute disqualification in its minimum and medium degrees and a fine of from 1,250 to 12,500 pesetas.

ART. 210. The public official who, without being expressly authorized by law, and the constitutional guaranties not being suspended, shall banish a person to a distance greater than 250 kilometers from his domicile, unless by virtue of a judicial sentence, shall incur the penalty of a fine of from 325 to 3,250 pesetas.

The public official who, without being expressly authorized by law, and the constitutional guaranties not being suspended, shall compel a person to move his domicile or residence, shall be punished with the penalty of banishment and a fine of from 625 to 6,250 pesetas.

ART. 211. The public official who, without being authorized by law, shall deport or exile from the territory of the kingdom any person, unless by virtue of a final sentence, shall be punished with the penalty of *confinamiento* and a fine of from 1,250 to 12,500 pesetas.

ART. 212. A public official who orders the payment of a general, provincial, or municipal tax not legally authorized shall be punished with the penalty of suspension in its maximum degree to temporary absolute disqualification in its minimum degree and a fine of from 625 to 6,250 pesetas.

ART. 213. The public officials who shall exact from taxpayers to the State, province, or municipality the payment of taxes not authorized according to their respective classes by the Cortes, the provincial deputation, or the municipal council, shall incur the penalty of suspension in its medium and maximum degree to temporary absolute disqualification in its medium degree and a fine of from 625 to 6,250 pesetas.

If such exaction should have been consummated, the fine shall be an amount equal to three times that of the amount collected.

If the exaction should have been effected by employing compulsion or any other means of coercion, the penalty shall be that of temporary absolute disqualification and the aforesaid fine.

ART. 214. If the amount collected should not have been paid according to its character into the treasury of the province or municipality by the fault of the person who may have collected it, he shall be pun-

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ished as a swindler by the maximum degree of the proper punishment therefor.

ART. 215. The authorities who shall give their aid and cooperation to the officials referred to in the two preceding articles shall incur the penalties of temporary absolute disqualification and a fine of from 325 to 3,250 pesetas.

If they should have received profits from the amounts collected, they shall be punished as equal principals in the crime punished in the preceding article.

ART. 216. The public official who shall condemn the property of any person, unless by virtue of a mandate from the competent authorities, for reason of public utility, before proper indemnification made therefor, shall incur the penalties of suspension in its medium and maximum degrees and a fine of from 625 to 6,250 pesetas.

If he shall disturb any person in the possession of his property, unless by virtue of a judicial writ or a mandate from the competent authority, issued in accordance with the express provisions of the laws, he shall incur the same penalty.

ART. 217. The following shall be punished with the penalties of suspension in its minimum and medium degrees and a fine of from 325 to 3,250 pesetas:

1. The public official who, the constitutional guaranties not being suspended, should forbid or prevent a person, neither under arrest nor a prisoner, from attending any meeting or demonstration that is legal in accordance to law.

2. The public official who, under the same conditions, should prevent or prohibit a person from forming part of any association, unless it be one of those included in article 186 of this code.

3. The public official who, under the same conditions as of the preceding articles, should prevent or forbid a person to address, either by himself or together with others, petitions to the Cortes, the King, or the authorities, unless it should have been forbidden to them by law.

ART. 218. A public official who, being neither authorized by law and the constitutional guaranties not being suspended, shall in any manner whatsoever prevent the holding of a peaceful meeting or demonstration of which he had official notice, or the foundation of any association not included in article 186 of this code, or the holding of its meetings, unless it be those in which any of the crimes punished in Title III, Book II of the same, should have been committed, shall incur the penalty of suspension in its medium and maximum degrees and a fine of from 625 to 6,250 pesetas.

ART. 219. The public official who, not being authorized by a law and the constitutional guaranties not being suspended, shall order the dissolution of any meeting or pacific demonstration, or the suspension

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of any association not included in article 186 of this code, shall be punished with the penalty of suspension in its maximum degree, to temporary absolute disqualification in its minimum degree, and a fine of from 625 to 6,250 pesetas.

ART. 220. The public official who does not bring to the notice of the judicial authorities his suspension of an unlawful association or the meeting of any other association whatsoever, and the reasons of the suspension ordered, within the twenty-four hours following his action, shall incur the penalty of suspension in its medium and maximum degrees and a fine of from 625 to 6,250 pesetas.

ART. 221. The same penalties shall be incurred by the public official who shall order the closing or dissolution of any private educational institution, unless for sufficient reasons of hygiene or morals or other causes expressly provided by law, and he who shall not inform the judicial authorities of such closing or dissolution within the twenty-four hours following its having taken place.

ART. 222. The penalty of banishment shall be incurred by the public official in its minimum and medium degrees, who without having demanded two successive times the dissolution of any meeting or demonstration, or the suspension of the session of an association, should employ force to dissolve or suspend it, unless there should have been previous violent aggression on the part of those taking part in the meeting, demonstration, or session of the association.

If slight injuries should result from the employment of force to one or more of those present, the penalty shall be that of banishment in its medium and maximum degrees and the same fine.

If the injuries should be grave, the penalty shall be that of *confinamiento* in its minimum and medium degrees and a fine of from 1,250 to 12,500 pesetas.

If death should have resulted therefrom, the penalty shall be that of *confinamiento* in its maximum degree to *relegación temporal* and a fine of from 3,125 to 31,250 pesetas.

ART. 223. A public official who, after a meeting or demonstration has been dissolved or any association or its meetings suspended, should refuse to give information to the judicial authority requesting it, of the causes which gave rise to said dissolution or suspension, shall be punished with the penalty of temporary absolute disqualification and a fine of from 625 to 6,250 pesetas.

SECTION III.—*Crimes in violation of the constitutional provisions relating to religion and worship.*

ART. 224. Those who by violence, disorderly conduct, threats, or tumults, prevent, interrupt, or disturb the functions, acts, ceremonies, or manifestations of the religion of the State shall be punished with the penalty of *prisión correccional* and a fine of from 65 to 650 pesetas

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if the crime were committed in churches, chapels, or places devoted to worship; and with that of *arresto mayor* to *prisión correccional* in its minimum degree, and a fine of from 50 to 500 pesetas if the offense be committed in any other place.

ART. 225. He who with the intention of offending the Catholic religion should trample, cast on the ground, or in any other manner profane the sacred elements of the Eucharist shall be punished with the penalty of *prisión mayor*.

ART. 226. Those who in offense of the State religion shall trample, destroy, break, or profane sacred objects devoted to worship within churches or without them, shall incur the penalty of *prisión correccional*.

ART. 227. He who with deliberate intention makes ridicule of the Catholic religion by word or writing, publicly contemning its dogmas, rites, or ceremonies, shall be punished with the penalty of *arresto mayor* to *prisión correccional* in its minimun degree if the deed should have occurred in churches or on the occasion of acts of worship; and with that of *arresto mayor* if the crime should have been committed in other places and not on the occasion of such acts of worship.

ART. 228. He who shall practice outside the precincts devoted to worship other than that of the Catholic religion public ceremonies or celebrations belonging to the same, shall incur the penalty of *confinamiento*.

For the purposes of this article the respective cemeteries of the dissenting religions shall be considered as precincts similar to those wherein they worship.

ART. 229. He who shall physically maltreat a minister of the Catholic religion while performing the offices of his ministry shall incur the penalty of *prisión correccional*.

He who shall offend under similar circumstances by word or gestures shall be punished with the penalty of *arresto mayor* in its medium degree to *prisión correccional* in its maximum degree.

ART. 230. He who by means of threats, violence, or other lawless coercion shall force any person to perform acts of worship or to attend the rites of a religion not his own, shall incur the penalty of *prisión correccional* in its medium and maximum degrees and a fine of from 625 to 6,250 pesetas.

ART. 231. He who by the same means shall prevent any person from performing the acts of worship of the religion which he professes, or from attending its rites, shall incur the penalties prescribed in the preceding article.

ART. 232. The following shall incur the penalty of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree and a fine of from 300 to 3,000 pesetas:

1. He who by the means mentioned in the preceding article shall

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force any person to perform the acts of worship or attend the rites of a religion which he himself professes.

2. He who by the same means shall prevent any person from observing the religious festivals of his sect.

3. He who by the same means shall prevent any person from opening his shop, warehouse, or other establishment, or force him to abstain from any work of whatsoever nature on stated religious festivals.

The provisions of the foregoing paragraph shall be understood without prejudice to the general or local police regulations or of public order.

ART. 233. Those who by the employment of the means mentioned in article 224 shall prevent or disturb the acts of worship or the ceremonies of a religion distinct from the Catholic religion within its precincts or cemeteries, respectively, shall be punished with the penalty of *arresto mayor*.

ART. 234. He who shall physically maltreat a minister of any religion other than the Catholic religion while exercising his functions shall be punished with the penalty of *arresto mayor* in its medium and maximum degrees to *prisión correccional* in its minimum degree.

Offense by speech, under similar circumstances, shall be punished with the penalty of *arresto mayor*.

ART. 235. He who shall publicly ridicule any of the dogmas or ceremonies of a religion that has adherents in Spain shall be punished with a fine of from 325 to 3,250 pesetas.

SECTION IV.—*Provisions common to the three preceding sections.*

ART. 236. The provisions of this chapter shall be understood without prejudice to those of other chapters of this code which prescribe a higher penalty for any of the acts included in the three preceding sections.

TITLE III.

CRIMES AGAINST PUBLIC ORDER.

CHAPTER I.

REBELLION.

ART. 237. Those who shall rise publicly and with open hostility against the Government for any of the following purposes are guilty of rebellion:

1. To proclaim the independence of the islands of Cuba and Porto Rico, or either of them.

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2. To dethrone the King, or depose the Regent or Regency of the Kingdom, or deprive them of their personal liberty, or oblige them to execute an act contrary to their will.

3. To prevent the holding of elections for deputies to the Cortes or Senators in the whole Kingdom, or the lawful assemblage of the same.

4. To dissolve the Cortes or prevent the deliberations of either of the colegislative bodies, or to force them to adopt any resolution.

5. To commit any of the crimes specified in article 163.

6. To subtract the Kingdom, or a part of it, or any body of land or naval troops, or any other class of armed force from its obedience to the Supreme Government.

7. To use and exercise the constitutional prerogatives of the ministers of the Crown, or to despoil them thereof, or hinder or curtail their free exercise of the same.

ART. 238. Those who by inciting the rebels and making them resolute shall have promoted and sustained the rebellion, begun for the purpose mentioned in No. 1 of the preceding article, and its principal chiefs, shall be punished with the penalty of *cadena perpetua* to death; and in other cases with that of *reclusión temporal* in its maximum degree to death.

ART. 239. Those who exercise a subaltern command in a rebellion organized to commit the crime referred to in No. 1 of article 237 shall incur the penalty of *cadena perpetua* to death, if they were persons filling a civil or ecclesiastical office.

ART. 240. Those who exercise a subaltern command in a rebellion, the purpose of which is to commit any crime mentioned in the other numbers of article 237, shall incur the penalty of *reclusión temporal* in its maximum degree to death, and that of *reclusión temporal* if said purpose were not included in any of them.

ART. 241. The mere participants in a rebellion shall be punished with the penalty of *reclusión temporal* in its fullest extent in the cases mentioned in the first paragraph of No. 2 of article 172, and with that of *prisión mayor* in its medium degree to *reclusión temporal* in its minimum degree, should they not be included therein.

ART. 242. If the rebellion should not have been organized by known leaders, those who in fact lead the others, or speak for them, or sign the receipts or other documents in their name, or exercise other similar acts in representation of the others, shall be considered leaders.

ART. 243. The following shall be punished as rebels, with the penalty of *prisión mayor:*

1. Those who, without rising against the Government, commit by craft or any other means whatsoever the crimes included in article 237.

2. Those who seduce troops or other class of land or naval armed force into committing the crime of rebellion.

If the rebellion actually takes place, the seducers shall be considered promoters thereof and shall suffer the penalty prescribed in article 238.

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ART. 244. Conspiracy to commit the crime of rebellion shall be punished with the penalty of *prisión correccional* in its medium and maximum degree.

The proposal to do so shall be punished with that of *reclusión temporal* in its minimum and medium degree.

CHAPTER II.

SEDITION.

ART. 245. Those who shall rise publicly and tumultuously in order to attain by force, or outside of legal methods, any one of the following objects, are guilty of sedition:

1. To prevent the promulgation or execution of laws, or the free holding of popular elections in any province, circumscription, or electoral district.

2. To prevent any authority, corporation, official, or public officer from freely exercising his duties or the execution of his judicial or administrative orders.

3. To wreak any deed of hate or revenge upon the person or property of any authority or its agents.

4. To wreak, with a political or social object, any deed of hate or revenge upon individuals, or upon any class in the State.

5. To despoil, with a political or social object, any class of persons, the municipality, the province, or the State of all or any part of their property, or to lay waste or destroy such property.

ART. 246. Those who by inciting the seditious and making them resolute shall have promoted and supported sedition and its principal leaders, shall be punished with the penalty of *reclusión temporal*, should they be included in any of the cases specified in the first paragraph of No. 2 of article 172, and with that of *prisión mayor*, if they are included in none of these.

ART. 247. Mere participants in sedition shall be punished with the penalty of *prisión correccional* in its medium and maximum degrees in the cases specified in the first paragraph of No. 2 of said article 172, and with that of *prisión correccional* in its minimum and medium degrees if not included therein.

ART. 248. The provisions of article 242 are applicable to the case of sedition which has not been organized by known leaders.

ART. 249. A conspiracy to commit the crime of sedition shall be punished with the penalty of *arresto mayor* to *prisión correccional* in its minimum degree.[1]

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[1] See General Order 109, Headquarters Department of Porto Rico, July 31, 1899, page 143.

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ART. 250. Those who shall seduce troops, or any other class of land or naval armed forces whatsoever, to commit the crime of sedition, shall be punished with the penalty of *prisión correccional* in its medium and maximum degree.

If the sedition should have been effectual, the seducers shall be considered as promoters thereof and shall suffer the penalty prescribed in article 246.

ART. 251. If the sedition should not have reached the point of embarrassing in a serious manner the exercise of public authority, nor having caused the perpetration of any other grave crime, the courts shall reduce the penalties prescribed in this chapter by one or two degrees.

CHAPTER III.

PROVISIONS COMMON TO THE TWO PRECEDING CHAPTERS.

ART. 252. The courts shall reduce by one or two degrees the penalties prescribed in the two preceding chapters in the case of rebels and seditious persons who may disband or submit to the lawful authorities at the first summons to do so, provided that they were not public employees.

ART. 253. Individual crimes committed during a rebellion or sedition, or on the occasion thereof, shall be respectively punished according to the provisions of this code.

If the authors thereof can not be discovered, the principal leaders of the rebellion or sedition shall be punished as such.

ART. 254. The authorities directly appointed by the government who shall not have resisted the rebellion or sedition by all the means within their power, shall suffer the penalty of temporary to perpetual absolute disqualification.

Those not directly appointed by the government shall suffer the penalty of suspension in its maximum degree to temporary absolute disqualification in its medium degree.

ART. 255. The employees who continue to discharge their duties under the orders of those in uprising, or who, without having had their resignation from office accepted, abandon it when there is danger of rebellion or sedition, shall incur the penalty of temporary special disqualification.

ART. 256. Those who shall accept office from rebels or seditious persons shall be punished with the penalty of temporary absolute disqualification for public office in its minimum degree.

ART. 257. The penalties of *prisión mayor* and *prisión correccional*, which are imposed for the crimes included in Chapters I and II, shall be served in institutions within or without the islands of Cuba or Porto Rico.

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Chapter IV.

CRIMINAL ATTEMPTS AGAINST THE AUTHORITIES AND THEIR AGENTS—RESISTANCE AND DISOBEDIENCE.

Art. 258. The following commit criminal attempt:

1. Those who, without public uprising, employ force or intimidation for any of the purposes mentioned under the crimes of rebellion and sedition.

2. Those who attack the authorities or their agents, or employ force against them, or gravely intimidate them, or offer an equally grave resistance while they are discharging the functions of their office or on the occasion thereof.

Art. 259. The criminal attempts included in the preceding article shall be punished with the penalties of *prisión correccional* in its medium degree to *prisión mayor* in its minimum degree, and a fine of from 625 to 6,250 pesetas, provided that any of the following circumstances are attendant:

1. If the aggression were accomplished by weapons.
2. If those guilty thereof were public officials.
3. If the delinquents laid hands upon the authorities.
4. If in consequence of compulsion the authorities should have yielded to the exactions of the delinquents.

Without these circumstances the penalty shall be *prisión correccional*, from its minimum to its medium degree, and a fine of from 375 to 3,750 pesetas.

Art. 260. The penalty prescribed in the last paragraph of the foregoing article shall be imposed in its maximum degree upon culprits if they employ the force or intimidation mentioned in number 1 of article 258 for the purpose mentioned in number 1 of article 237, or if they should have laid hands upon persons who may have come to the assistance of the authorities, or upon their agents, or upon public officials.

Art. 261. The persons who, without being included in article 258, should resist the athorities or their agents, or should grossly disobey them in the performance of the duties of their office, shall be punished with the penalties of *arresto mayor* and a fine of from 325 to 3,250 pesetas.

Chapter V.

ACTS OF DISRESPECT, INSULTS, ACTS OF CONTUMELY AND THREATS AGAINST AUTHORITIES; AND INSULTS, ACTS OF CONTUMELY, AND THREATS AGAINST THEIR AGENTS AND OTHER PUBLIC OFFICIALS.

Art. 262. The following commit an act of disrespect:

1. Those who, while a minister of the Crown or an authority is in

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the exercise of his functions or on the occasion thereof, shall calumniate, outrage, or insult him by deed or word, in his presence or in a writing addressed to him, or who shall threaten him.

2. The public official who, while his hierarchical superior is in the exercise of his office, shall calumniate, outrage, or insult him by act or word, in his presence or in any writing addressed to him, or who shall threaten him.

ART 263. If the calumny, insult, outrage, or threat referred to in the foregoing article should be grave, the delinquent shall suffer the penalty of *prisión correccional* in its minimum and medium degrees and a fine of from 375 to 3,750 pesetas.

If they should be less grave, the penalty shall be that of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree and a fine of from 325 to 3,250 pesetas.

ART. 264. Provocation to fight a duel, even though dissembled or having an appearance of privacy, shall be considered a grave threat for the purposes of the foregoing.

ART. 265. Those who, while a minister of the Crown or an authority is in the exercise of his functions or on the occasion thereof, shall calumniate, outrage, or insult him by deed or word, outside his presence, or in a writing not addressed to him, shall be punished with the penalty of *arresto mayor*.

ART. 266. The penalty of *arresto mayor* shall also be imposed on those who outrage, insult, or threaten, by act or word, public officials or agents of the authorities, in their presence or in a writing addressed to them.

CHAPTER VI.

PUBLIC DISORDERS.

ART. 267. Those who shall raise a tumult or grossly disturb order at the hearing of a superior or inferior court at the public acts pertaining to any public authority or corporation at any electoral college, offices, or public institutions, at public spectacles or solemnities, or a large meeting, shall be punished with the penalties of *arresto mayor* in its medium degree to *prisión correccional* in its minimum degree and a fine of from 375 to 3,750 pesetas.

Those who shall cause a tumult or grossly disturb order on farms or plantations by refusing to work or by disobeying or resisting the persons in charge of their direction or management shall incur the same penalties.

ART. 268. Those who shall grossly disturb public order in order to offer an outrage or other wrong to any individual person shall incur the penalty of *arresto mayor*.

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If the purpose of the offense were to prevent any person from exercising his political rights, the said penalty of *arresto mayor* in its maximum degree shall be imposed on the culprit.

ART. 269. The penalty of *arresto mayor* shall also be imposed, unless a higher penalty is applicable in accordance with other articles of this code, on those who shall raise cries provocative of rebellion or sedition at any meeting or association, or in any public place, or who shall show in the same places badges or banners which might directly provoke the disturbance of public order.

ART. 270. Those who shall extricate from jails or penal institutions any person detained therein, or who facilitate his escape, shall be punished with the penalty of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree, if they should employ violence, intimidation, or subornation for the purpose, and with the penalty of *arresto mayor* should they make use of other means.

If the escape of the prisoner should be effected outside of said institutions by means of surprising those charged with their conduction, the same penalties shall be applied in their minimum degree.

ART. 271. Those who shall place obstructions or damage railroad tracks, or obstruct or damage telegraph lines or intercept messages or correspondence, shall be punished with the penalty of *prisión correccional* in its minimum to its medium degree.

ART. 272. Upon those who destroy or injure pictures, statues, or any other public monument of usefulness or ornamentation shall be imposed the penalty of *arresto mayor* in its medium degree to *prisión correccional* in its minimum degree.

CHAPTER VII.

PROVISIONS COMMON TO THE THREE PRECEDING CHAPTERS.

ART. 273. For the purposes of the articles included in the three preceding chapters, a person who, by himself alone, or as a member of any corporation or tribunal, shall exercise special jurisdiction, shall be considered as an authority.

The officials of the Department of Public Prosecution (Ministerio Fiscal) shall also be considered authorities.

ART. 274. If the person committing any of the crimes specified in the three preceding chapters should be a civil or ecclesiastical authority, he shall be punished with the maximum of the respective penalty and with temporary absolute disqualification.

ART. 275. The ministers of a religion who, in the exercise of their calling, provoke the execution of any of the crimes included in the three preceding chapters, shall be punished with the penalty of banish-

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ment, if their provocations were of no effect, and with that of *confinamiento mayor* if they did produce effect, unless a greater penalty is prescribed in other articles of this code for the crime committed.

TITLE IV.

FALSITIES AND FALSIFICATIONS.

CHAPTER I.

FALSIFICATION OF THE ROYAL SIGNATURE OR STAMP, THE SIGNATURE OF MINISTERS, SEALS, AND MARKS.

SECTION I.—*Falsification of the royal signature or stamp and the signature of ministers.*

ART. 276. He who shall counterfeit the stamp of the King or of the Regent of the Kingdom, or the signatures of the ministers of the Crown, shall be punished with the penalty of *cadena temporal.*

ART. 277. He who shall counterfeit the signature or stamp of the head of a foreign power, or the signature of his ministers, shall be punished with the penalty of *presidio mayor* if the culprit should have made use in Spanish territory of the counterfeited signature or stamp, and with that of *presidio correccional* in its medium to its maximum degree if he should have made use of them outside of said territory.

ART. 278. He who should knowingly make use of a counterfeited signature or stamp of the classes referred to in the preceding article, shall incur the penalty next lower in degree than that prescribed therein for the counterfeiters thereof.

SECTION II.—*Falsification of seals and marks.*

ART. 279. He who shall counterfeit the great seal of the State shall be punished with the penalty of *cadena temporal.*

He who should knowingly make use of the counterfeit seal of the State shall be punished with the penalty next lower in degree than that prescribed in the preceding paragraph.

ART. 280. He who shall counterfeit the seal of the State of a foreign power, and make use of it in Spanish territory, shall be punished with the penalty of *presidio mayor*, and with that of *presidio correccional* in its medium to its maximum degree, if he should have made use of it outside of the said territory.

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ART. 281. He who, knowing of the falsity of the seals referred to in the two preceding articles, but without having participated in their falsification, should avail himself of or use them, shall be punished with the penalty next lower in degree than that prescribed in the said articles for the counterfeiters.

ART. 282. The counterfeiting of marks and seals of inspectors of weights and measures shall be punished with the penalties of *presidio mayor* and a fine of from 625 to 6,250 pesetas.

ART. 283. Those who knowingly expose for sale objects of gold or silver marked with false stamps of assay shall be punished with the penalty prescribed in the preceding article.

ART. 284. The counterfeiting of the seals used by any authority, tribunal, official corporation, or public office shall be punished with the penalty of *presidio correccional* in its minimum and medium degrees and a fine of from 375 to 3,750 pesetas.

The mere use of seals of this kind with knowledge of their falsity shall be punished with the same penalties, if gain to the prejudice of the public funds were intended; otherwise, the penalty next lower in degree shall be imposed on the culprit.

ART. 285. The falsification of the seals, marks, and countersigns which are employed in the offices of the State in order to identify some object or to insure the payment of taxes, shall be punished with the penalties of *presidio correccional* in its minimum and medium degrees and a fine of from 375 to 3,750 pesetas.

ART. 286. If the falsifications referred to in the two preceding articles should have been accomplished without the employment of stamps or dies or other mechanical instruments used in counterfeiting, the penalty next lower in degree than those prescribed for such crimes shall be imposed on the culprit.

ART. 287. The falsification of seals, marks, tickets, or countersigns which industrial or commercial establishments make use of, shall be punished with the penalties of *presidio correccional* in its minimum and medium degrees.

ART. 288. He who shall place on sale objects of commerce, substituting for the mark or name of the real manufacturer the mark or name of a fictitious one, shall be punished with the penalty of *arresto mayor* and a fine of from 325 to 3,250 pesetas.

ART. 289. He who removes from any seal, ticket, or countersign the mark or sign that indicates that it had already been used or was useless for the object of its issue, shall also incur the penalty of *arresto mayor* and a fine of from 325 to 3,250 pesetas.

He who knowingly makes use of such class of seals or countersigns shall incur a fine of from 325 to 3,250 pesetas.

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CHAPTER II.

COUNTERFEITING OF MONEY.

ART. 290. Whosoever shall make counterfeit money, of a value less than the legitimate, by imitating gold or silver coins lawfully current in the Kingdom, shall be punished with the penalties of *cadena temporal* in its medium degree to *cadena perpetua*, and a fine of from 625 to 6,250 pesetas, if the counterfeit money were of copper.

ART. 291. He who shall clip lawful coins shall be punished with the penalties of *presidio mayor* and a fine of from 625 to 6,250 pesetas if the money were of gold or silver, and with that of *presidio correccional* in its minimum and medium degrees and a fine of from 325 to 3,250, pesetas if it were of copper.

ART. 292. He who shall make counterfeit money of the value of the genuine by imitating money that is lawfully current in the Kingdom, shall be punished with the penalties of *presidio correccional* in its medium and maximum degrees and a fine of from 625 to 6,250 pesetas.

ART. 293. He who shall make counterfeit money by imitating money that is not lawfully current in the Kingdom shall be punished with the penalties of *presidio correccional* in its medium and maximum degrees and a fine of from 325 to 3,250 pesetas.

ART. 294. He who shall clip lawful money that is not lawfully current in the Kingdom shall be punished with the penalties of *presidio correccional* in its minimum and medium degrees and a fine of from 625 to 6,250 pesetas.

ART. 295. The penalties prescribed in the two foregoing articles shall be imposed in their respective cases on those who shall introduce counterfeit money into the islands of Cuba and Porto Rico.

Those who circulate counterfeit money shall also be punished with the same penalties when connivance exists between them and the makers thereof or those who introduce it.

ART. 296. Those who, without the connivance referred to in the preceding article, shall pass counterfeit or clipped money which, with knowledge of its character, they had acquired for the purpose of circulating it, shall be punished with the penalties of *presidio correccional* in its medium and maximum degrees and a fine of from 325 to 3,250 pesetas.

ART. 297. He who, having received counterfeit money in good faith should issue it after knowing its falsity, shall be punished, if the amount spent exceed 325 pesetas, with a fine of from an amount equal to up to one three times that of the genuine money.

ART. 298. Those in whose possession counterfeit money shall be found which, from its amount and character, may reasonably allow

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the inference that it was intended for circulation, shall be punished as guilty of an attempt to commit the crimes of circulating counterfeit money.

Chapter III.

FALSIFICATION OF BANK NOTES, INSTRUMENTS OF CREDIT, STAMPED PAPER, POSTAGE STAMPS, AND OTHER STAMPED ARTICLES WHOSE SALE IS RESERVED TO THE STATE.

Art. 299. Those who shall falsify bank notes or other instruments payable to the bearer, or their coupons, whose issue may have been authorized by the law of the Kingdom, or those who shall introduce them into the islands of Cuba and Porto Rico, shall be punished with the penalties of *cadena temporal* in its medium degree to *cadena perpetua* and a fine of from 6,250 to 62,500 pesetas.

The same penalty shall be imposed upon those who shall circulate them in connivance with the counterfeiter or introducer thereof.

Art. 300. Those who, without being in relation with the counterfeiters or introducers thereof, shall acquire, for the purpose of circulation, bank notes or other instruments payable to bearer, and their coupons, knowing that they are false, shall be punished with the penalty of *cadena temporal.*

Art. 301. Those who shall, in the islands of Cuba and Porto Rico, falsify bank notes or any other class of instruments payable to bearer, or their coupons, whose issue is authorized by a law of a foreign country, or by a provision that has there the same force as law, shall also be punished with the penalty of *cadena temporal.*

Those who, in complicity with the counterfeiters, shall introduce them shall incur the same penalty.

Art. 302. Those who, having in good faith acquired bank notes or other instruments payable to bearer, or their coupons, included in articles 299 and 301, and shall pass them knowing of their falsity, shall be punished with the penalties of *presidio correccional* in its medium and maximum degrees and a fine of from 625 to 6,250 pesetas.

Art. 303. Those who shall counterfeit or introduce into the islands of Cuba or Porto Rico bonds payable to order, or other documents of credit not to bearer, whose issue is authorized by virtue of a law, shall be punished with the penalties of *cadena temporal* and a fine of from 6,250 to 62,500 pesetas.

Art. 304. Those who shall counterfeit securities payable to order, or any other class of instruments of credit not to bearer, whose issue is authorized by a law of a foreign country, or by a provision that has there the same force as a law, shall be punished with the penalty of *presidio mayor* in its medium degree to *cadena temporal* in its minimum degree.

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ART. 305. He who knowingly shall negotiate or make profit in any other manner, to the prejudice of a third person, of a counterfeit security of those included in the preceding articles, shall incur the penalties of *presidio correccional* in its medium and minimum degrees and a fine of from 375 to 3,750 pesetas.

ART. 306. He who shall present in any judicial proceedings any security payable to the bearer, or its coupons, knowing their falsity, shall incur the penalties of *presidio correccional* in its medium and minimum degrees and a fine of from 325 to 3,250 pesetas.

ART. 307. He who shall counterfeit stamped paper, telegraph or postage stamps, or any other class of stamped articles whose sale is reserved to the State, shall be punished with the penalty of *presidio mayor*.

The same penalty shall be imposed on those who introduce the same into the territory of Cuba or Porto Rico, or on those who circulate them in connivance with the counterfeiters or introducers thereof.

ART. 308. Those who, without being in connivance with the counterfeiters or introducers thereof, shall knowingly acquire false paper, stamps, or articles of the kind mentioned in the preceding article, in order to circulate them, shall be punished with the penalty of *presidio correccional* in its minimum and medium degrees and a fine of from 375 to 3,750 pesetas.

ART. 309. Those who, having in good faith acquired public securities of the character mentioned in the foregoing article shall circulate them, knowing their falsity, shall incur the penalty of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree.

Those who merely use them, having knowledge of their falsity, shall incur a fine of from five to ten times the value of the genuine paper or securities they may have used.

CHAPTER IV.

FALSIFICATION OF DOCUMENTS.

SECTION I.—*Falsification of official and commercial documents and telegraphic dispatches.*

ART. 310. The penalties of *cadena temporal* and a fine of from 1,250 to 12,500 pesetas shall be imposed on a public official who, taking advantage of his authority, shall commit a falsification—

1. By counterfeiting or feigning any writing, signature, or rubric.
2. By including in any act the participation of persons who had no such participation.
3. By attributing to those who were present thereat declarations or statements different from those which they made.

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4. By falsifying the truth in a narration of facts.

5. By altering true dates.

6. By making in a genuine document any alteration or interlineation altering its meaning.

7. By giving out an authentic copy of a fictitious document, or by stating therein a contrary or different thing from that contained in the genuine original.

8. By intercalating any instrument in a protocol, register, or official book.

An ecclesiastical minister who shall commit any of the offenses included in the foregoing numbers, with regard to acts or documents which might affect the civil status of persons, shall incur the penalty prescribed in the first paragraph of this article.

ART. 311. An individual who shall commit any of the falsifications specified in the preceding article in public or official documents or in bills of exchange, or any other class of commercial paper, shall be punished with the penalties of *presidio mayor* and a fine of from 1,250 to 12,500 pesetas.

ART. 312. He who shall knowingly present in judicial proceedings or should use with intent of gain a false document of the kind mentioned in the foregoing articles, shall be punished with the penalty lower by two degrees than that prescribed for the falsifiers.

ART. 313. A public official in charge of the telegraph service who shall invent or falsify a telegraphic message shall incur the penalty of *prisión correccional* in its medium and maximum degrees.

He who shall make use of the false message with intent of gain or desire to prejudice another shall be punished as the principal in the falsification.

SECTION II.—*Falsification of private documents.*

ART. 314. He who, to the prejudice of a third person or with intent of causing it, shall, in a private document, commit any of the falsifica tions specified in article 310, shall be punished with the penalties of *presidio correccional* in its minimum and medium degrees and a fine of from 625 to 6,250 pesetas.

ART. 315. He who, without having taken part in the falsification, should present in judicial proceedings or shall use with intent of gain or to the prejudice of a third person, knowingly, a false document of those included in the preceding article, shall incur the penalty lower bv one degree than that prescribed for the falsifiers.

SECTION III.—*Falsification of passports, cédulas of residence, and certificates.*

ART. 316. A public official who, taking advantage of his office, shall issue a passport or a *cédula* of residence under a fictitious name, or

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shall give it in blank, shall be punished with the penalties of *prisión correccional* in its minimum and medium degrees, and temporary special disqualification.

ART. 317. He who shall make a false passport or *cédula* of residence shall be punished with the penalty of *arresto mayor* in its maximum degree, to *prisión correccional* in its minimum degree, and a fine of 325 to 3,250 pesetas.

The same penalties shall be imposed on the person who, in a genuine passport or *cédula* of residence, shall change the name of the person in whose favor it may have been issued, or of the authority which issued it, or who shall alter it in any other essential particular.

ART. 318. He who shall make use of the passport or *cédula* of residence referred to in the preceding article shall be punished with a fine of from 325 to 3,250 pesetas.

Those who shall make use of a genuine passport or *cédula* of residence issued in favor of another person shall incur the same penalty.

ART. 319. The physician who shall deliver a false certificate of illness or physical injury, for the purpose of exempting a person from any public service, shall be punished with the penalties of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree and a fine of from 325 to 3,250 pesetas.

ART. 320. A public official who shall issue a false certificate of merit or service, of good conduct, of poverty, or of other similar circumstances shall be punished with the penalties of suspension in its medium and maximum degrees and a fine of from 325 to 3,250 pesetas.

ART. 321. An individual who shall falsify a certificate of the kinds mentioned in the preceding articles shall be punished with the penalty of *arresto mayor*.

This provision is applicable to the person who shall make use of such false certificate knowingly.

CHAPTER V.

PROVISIONS APPLICABLE TO THE FOUR PRECEDING CHAPTERS.

ART. 322. He who shall manufacture or introduce dies, seals, marks, or any other kind of tools or instruments whatsoever knowingly destined to the falsifications referred to in the preceding chapters of this title, shall be punished with the same pecuniary penalties and with the personal penalties next lower in degree than those respectively prescribed for falsifiers.

ART. 323. He who shall have in his possession any of the tools or instruments referred to in the preceding article, and should not give a satisfactory explanation as to their acquisition or preservation, shall be punished with the same pecuniary penalties and the personal pen-

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alties lower by two degrees than those corresponding to the falsification for which they are proper.

ART. 324. The official who, in order to execute any falsification to the prejudice of the State, of a corporation, or of an individual, in whose service he may be, shall make use of legitimate tools or instruments intrusted to him, shall incur the same pecuniary and personal penalties that correspond to the falsification committed, being imposed upon him in their maximum degree; and he shall furthermore incur a penalty of from temporary absolute disqualification in its maximum degree to perpetual absolute disqualification.

ART. 325. Those who without being included in the preceding article shall take possession of the legitimate tools or instruments mentioned in the same, and shall make use of them to execute any falsification to the prejudice of the State, corporation, or individual to whom they belong, shall incur the same pecuniary penalties and the personal penalties next lower in degree that correspond to the falsification committed.

ART. 326. If the profit which those guilty of the falsification punished in this title may have derived, or which they proposed to gain, can be estimated, there shall be imposed upon them a fine of an amount equal up to three times that of such profit, unless the maximum thereof were less than the minimum penalty prescribed for the crime, in which case the latter shall be applied.

CHAPTER VI.

FRAUDULENT CONCEALMENT OF PROPERTY OR INDUSTRY, FALSE TESTIMONY,[1] AND FALSE ACCUSATION AND DENUNCIATION.

ART. 327. He who, upon being questioned by the competent administrative official, shall conceal all or part of his property, or the trade or industry in which he is engaged, for the purpose of eluding thereby the payment of the taxes that ought to be paid upon the former or for the latter, shall incur a fine of an amount equal to up to five times the value of the taxes which he ought to have paid, but in no case shall it be less than 325 pesetas.

ART. 328. He who, in a criminal cause, shall give false testimony against the accused shall be punished:

1. With the penalty of *cadena temporal* in its maximum degree to *cadena perpetua*, if the accused should have been in such cause sentenced to the penalty of death, and it should have been carried out.

2. With the penalty of *cadena temporal*, if the accused should have been condemned in the cause to *cadena perpetua* and should have begun to undergo said penalty.

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[1]See Order No. 116, Headquarters Division of Cuba, March 17, 1900, page 138.

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3. With the penalty of *presidio mayor*, if the accused should have been condemned in the cause to *cadena perpetua* and should not have begun to undergo the same.

4. With the penalty of *presidio correccional*, in its maximum degree to that of *presidio mayor* in its medium degree, if the accused should have been condemned in the cause to suffer any other corporal punishment and should have begun to undergo the same.

5. With the penalty of *presidio correccional* in its medium degree to *presidio mayor* in its minimum degree, if the accused should have been condemned in the cause to any other corporal penalty and should not have begun to undergo the same.

6. With the penalties of *presidio correccional* in its medium and maximum degrees and a fine of from 625 to 6,250 pesetas, if the accused should have been sentenced in the cause to a correctional penalty and should have begun to undergo the same.

7. With the penalties of *presidio correccional* in its minimum and medium degrees and a fine of from 375 to 3,750 pesetas, if the accused should have been sentenced in the cause to a correctional penalty and should not have begun to undergo the same.

8. With the penalties of *arresto mayor* in its maximum degree to *presidio correccional* in its minimum degree and a fine of from 325 to 3,250 pesetas, if the accused should have been condemned to a light penalty and should have begun to undergo the same.

9. With the penalties of *arresto mayor* and a fine of from 325 to 3,250 pesetas, if the accused should have been condemned to suffer a light penalty and should not have begun to undergo the same.

ART. 329. He who, in a criminal cause, shall give false testimony in favor of the accused shall be punished with the penalties of *arresto mayor* in its maximum degree to *prisión correccional* in its medium degree and a fine of from 375 to 3,750 pesetas, if the cause were for a crime; and with that of *arresto mayor* if it were for a misdemeanor.

ART. 330. The penalty of *arresto mayor* in its minimum and medium degrees shall be imposed on the person who, in a criminal cause for a crime, shall give false testimony that neither prejudices nor favors the accused.

ART. 331. False testimony given in a civil cause shall be punished with the penalty of *arresto mayor* in its maximum degree to *presidio correccional* in its medium degree and a fine of from 625 to 6,250 pesetas.

If the amount of the claim should not exceed 625 pesetas, the penalties shall be those of *arresto mayor* and a fine of from 625 to 6,250 pesetas.

ART. 332. The penalties of the preceding articles are applicable in their maximum degree to the experts who testify falsely in judicial proceedings.

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ART. 333. Whenever the false statement of the witness or expert shall have been given on account of subornation, the penalties shall be those next higher in degree to those respectively fixed in the preceding articles, there being imposed furthermore a fine of an amount equal up to three times that promised or the value of the gift.

The latter shall be confiscated should it have been delivered to the person suborned.

ART. 334. When the witness or expert without essentially perverting the truth shall distort it by his reticence or inexact statements the penalties shall be:

1. A fine of from 375 to 3,750 pesetas should such falsification take place in a criminal cause; and

2. From 325 to 3,250 pesetas if it should take place in a cause of a misdemeanor or in a civil action.

ART. 335. He who shall knowingly offer perjured witnesses or false documents in a judicial proceeding shall be punished as guilty of false testimony.

ART. 336. The crime of false accusation or denunciation is committed by falsely imputing to any person acts which, if they were true, would constitute a crime that would give rise to proceedings ex officio, if the imputation were made before an administrative or judicial official who would be obliged to proceed to its investigation or punishment by reason of his office.

The denouncer or accuser, however, shall not be proceeded against unless by virtue of a final sentence or writ, equally final, of the court which took cognizance of the crime imputed, dismissing the complaint.

The latter shall proceed ex officio against the denouncer or accuser, provided that the principal cause should show sufficient grounds for instituting a new action.

ART. 337. A person guilty of false accusation or denunciation shall be punished with the penalty of *presidio correccional* in its medium and maximum degrees, if the crime imputed were grave; with that of *prisión correccional* in its minimum and medium degrees, if the crime imputed were "less grave;" with that of *arresto mayor*, if the imputation should have been a misdemeanor; and with the additional imposition in each case of a fine of from 625 to 6,250 pesetas.

CHAPTER VII.

USURPATION OF OFFICE, RANK, AND TITLES, AND IMPROPER USE OF NAMES, DRESS, INSIGNIA, AND DECORATIONS.

ART. 338. He who, without warrant or legitimate cause, shall exercise acts pertaining to an authority or public official, attributing to himself an official character, shall be punished with the penalty of *prisión correccional* in its minimum and medium degrees.

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ART. 339. He who, attributing to himself the rank of professor, shall publicly perform acts belonging to a faculty, which can not be filled without an official title, shall incur the penalty of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree.

ART. 340. He who shall usurp the character which would enable him to exercise the functions belonging to ministers of a religion that has adherents in the land, or should perform said functions, shall incur the penalty of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree.

ART. 341. He who shall assume and publicly attribute to himself titles of nobility that do not belong to him shall incur a fine of from 625 to 6,250 pesetas.

ART. 342.[1] He who shall publicly use an assumed name shall incur the penalties of *arresto mayor* in its minimum and medium degrees and a fine of from 325 to 3,250 pesetas.

If the purpose of the use of the assumed name were the concealment of any crime, the evasion of a penalty, or the causing of any prejudice to the State or to individuals, there shall be imposed on the culprit the penalties of *arresto mayor* in its medium and maximum degrees and a fine of from 375 to 3,750 pesetas.

Notwithstanding the provisions of this article, the use of an assumed name may be temporarily authorized by the superior administrative authority for sufficient cause.

ART. 343. The public official who, in the duties belonging to his office, shall attribute to any person, in connivance with him, titles of nobility, or a name that does not belong to him, shall incur a fine of from 375 to 3,750 pesetas.

ART. 344. He who shall publicly and unlawfully wear a uniform or dress belonging to an office which he does not hold, or of a class to which he does not belong, or of a rank not his own, or insignia or decorations that he is not authorized to wear, shall be punished with the penalty of a fine of from 325 to 3,250 pesetas.

TITLE V.

VIOLATION OF THE LAWS RELATING TO INTERMENTS, VIOLATION OF SEPULCHERS, AND OFFENSES AGAINST PUBLIC HEALTH.

CHAPTER I.

VIOLATION OF LAWS RELATING TO INTERMENT AND VIOLATION OF SEPULCHERS.

ART. 345. He who shall conduct or cause to be conducted an interment in contravention to the provisions of the laws or regulations with regard to the time, place, and other formalities prescribed for

[1] See Order No. 150, Headquarters Division of Cuba, April 10, 1900, page 139.

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interments, shall incur the penalties of *arresto mayor* and a fine of from 375 to 3,750 pesetas.

ART. 346. He who shall violate sepulchers or graves, committing any acts whatsoever directly tending to detract from the respect due the memory of the dead, shall be sentenced to the penalties of *arresto mayor* and a fine of from 325 to 3,250 pesetas.

CHAPTER II.

OFFENSES AGAINST PUBLIC HEALTH.

ART. 347. He who, without having been duly authorized, shall manufacture substances injurious to health, or chemical products capable of causing great destruction, for the purpose of dealing therein, or who shall send them out, or sell or deal in them, shall be punished with the penalties of *arresto mayor* and a fine of from 625 to 6,250 pesetas.

ART. 348. He who, being authorized to deal in substances which might be injurious to health, or chemical products of the kind mentioned in the preceding article, shall transmit them or supply them without complying with the formalities prescribed in the respective regulations, shall be punished with the penalties of *arresto mayor* and a fine of from 325 to 3,250 pesetas.

ART. 349. Pharmacists who shall send out adulterated medicines, or shall substitute certain ones for others, or shall dispense them without complying with the formalities prescribed in the laws and regulations, shall be punished with the penalties of *arresto mayor*, in its maximum degree to *prisión correccional* in its minimum degree and a fine of from 325 to 3,250 pesetas.

If by reason of the sending out of such medicines the death of a person should have resulted, the penalty of *prisión correccional* in its medium and maximum degrees, and a fine of from 625 to 6,250 pesetas shall be imposed upon the culprit.

ART. 350. The provisions of the two preceding articles are applicable to those who deal in the substances or products mentioned therein, and the employees of the pharmacists, if they should be the culprits.

ART. 351. He who shall exhume or transfer human remains, in violation of the regulations and other sanitary provisions, shall incur the penalty of a fine of from 325 to 3,250 pesetas.

ART. 352. He who shall alter beverages or articles of food destined for public consumption by any composition whatever noxious to health, or who shall sell spoiled goods, or who shall manufacture or sell objects whose use would be necessarily injurious to health, shall be punished with the penalties of *arresto mayor* in its maximum degree

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to *prisión correccional* in its minimum degree and a fine of from 325 to 3,250 pesetas.

The adulterated goods and the articles injurious to health shall always be destroyed.

ART. 353. The penalty prescribed in the foregoing article shall also be imposed—

1. Upon a person who shall secrete or remove articles intended for destruction or disinfection, with the object of selling or buying them.

2. Upon a person who shall throw into a spring, cistern, or river the water of which is used for drinking purposes, any object which should make the water injurious to health.

TITLE VI.

GAMBLING AND RAFFLES.

ART. 354. The bankers and proprietors of houses where games of chance, stakes, or hazard are played, shall be punished with the penalty of *arresto mayor* and a fine of from 625 to 6,250 pesetas, and in case of a repetition with those of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree and a fine double the above mentioned.

The players who assemble at the houses referred to shall be punished with those of *arresto mayor* in its minimum degree and a fine of from 325 to 3,250 pesetas.

In case of repetition, with that of *arresto mayor* in its medium degree and double the fine.

ART. 355. The managers of and circulators of tickets in unauthorized lotteries or raffles shall be punished with the penalty of *arresto mayor* in its minimum and medium degrees and a fine of from 325 to 3,250 pesetas.

Those who use fraudulent devices to insure winning in games of chance or raffles shall be punished as swindlers.

ART. 356. The money or other articles and the instruments and tools used in gambling or raffles shall be confiscated.

TITLE VII.

OFFENSES COMMITTED BY PUBLIC EMPLOYEES IN THE DISCHARGE OF THEIR OFFICES.

CHAPTER I.

DERELICTION OF DUTY.

ART. 357. The judge who shall knowingly pass an unjust sentence upon a guilty person in a criminal prosecution for crime, shall incur the penalty imposed by such sentence, if it should have been executed, and in addition that of temporary absolute disqualification in its maximum degree up to perpetual absolute disqualification.

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ART. 358. The judge who shall knowingly pass an unjust sentence upon a guilty person, if it should not have been put into execution, shall be punished with the penalty next lower in degree than that which he had imposed by such unjust sentence, if the crime were a grave crime, and with that next lower by two degrees than the sentence imposed if the crime were less grave.

In all the cases of this article there shall also be imposed on the culprit the penalty of temporary special disqualification in its maximum degree to perpetual special disqualification.

ART. 359. If the unjust sentence should be knowingly passed upon acriminal in a trial for a misdemeanor, the penalties shall be those of *arresto mayor* and temporary special disqualification in its maximum degree to perpetual special disqualification.

ART. 360. The judge who in a criminal prosecution shall knowingly pronounce an unjust sentence in favor of a criminal, shall incur the penalty of *prisión correccional* in its minimum and medium degrees and temporary special disqualification in its maximum degree to perpetual special disqualification if the cause were for a grave crime, and that of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree and the same disqualification, if the prosecution were for a less grave crime, and that of *arresto mayor* in its minimum degree and suspension, if the prosecution were for a misdemeanor.

ART. 361. The judge who shall knowingly render an unjust judgment in a civil cause shall incur the penalties of *arresto mayor* in its medium degree to *prisión correccional* in its minimum degree, and temporary special disqualification in its maximum degree to perpetual special disqualification.

ART. 362. The judge who, on account of inexcusable negligence or ignorance, shall render judgment or pass sentence in a civil or criminal case that is manifestly unjust, shall incur the penalty of temporary special disqualification in its maximum degree to perpetual special disqualification.

ART. 363. The judge who shall knowingly pronounce an unjust interlocutory decree shall incur the penalty of suspension.

ART. 364. The judge who shall refuse to pass upon a cause, under pretext of obscurity, insufficiency, or silence of the law, shall be punished with the penalty of suspension.

The judge guilty of malicious delay in the administration of justice shall incur the same penalty.

ART. 365. The public official who shall knowingly render or advise an unjust interlocutory decree or decision of administrative litigation or in a matter merely administrative, shall incur the penalty of temporary special disqualification in its maximum degree up to perpetual special disqualification.

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The public official who shall render or advise, through inexcusable negligence or ignorance, a manifestly unjust interlocutory decree or decision in a matter of administrative litigation, or merely administrative, shall be punished with the same penalty.

ART. 366. The public official who, neglecting the duties of his office, shall maliciously fail to move the prosecution and punishment of delinquents shall incur the penalty of temporary special disqualification in its maximum degree to perpetual special disqualification.

ART. 367. The attorney or solicitor who, in malicious abuse of his profession or through inexcusable negligence or ignorance, shall prejudice his client or disclose his secrets of which he had gained knowledge in the course of his professional duties shall be punished with a fine of from 625 to 6,250 pesetas.

ART. 368. The attorney or solicitor who, having been retained to defend the cause of one party, shall subsequently, without his consent, defend the opposite side in the same action or give counsel to the same, shall be punished with the penalties of temporary special disqualification and a fine of from 325 to 3,250 pesetas.

CHAPTER II.

FAITHLESSNESS IN THE CUSTODY OF PRISONERS.

ART. 369. The public official guilty of connivance in the escape of a prisoner whose conveyance and custody may have been intrusted to him shall be punished—

1. In case the fugitive should have been finally sentenced to undergo any penalty, with that lower than the same by two degrees and that of temporary special disqualification in its maximum degree to perpetual special disqualification.

2. With the penalty lower by three degrees than that prescribed by law for the crime for which the fugitive was being tried, should he not as yet have been finally condemned, and with that of temporary special disqualification.

ART. 370. The individual who, being in charge of the conveyance or custody of a prisoner or person under arrest, shall commit any of the crimes mentioned in the preceding article, shall be punished with the penalties next lower in degree than those prescribed for public officials.

CHAPTER III.

FAITHLESSNESS IN THE CUSTODY OF DOCUMENTS.

ART. 371. The public official who shall steal, destroy, or hide documents or papers entrusted to him by virtue of his office, shall be punished:

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1. With the penalties of *prisión mayor* and a fine of from 625 to 6,250 pesetas, provided that a grave injury to a third person or the public interests has resulted from his action.

2. With *prisión correccional* in its minimum and medium degrees and a fine of from 325 to 3,250 pesetas, if the injury to the third person or to the public interests were not grave.

In either case there shall furthermore be imposed the penalty of temporary special disqualification in its maximum degree to perpetual special disqualification.

ART. 372. The public official who, having charge of the custody of papers or effects sealed by the authorities, should break the seals, or consent that they be broken, shall be punished with the penalties of *prisión correccional* in its minimum and medium degrees, temporary special disqualification in its maximum degree to perpetual special disqualification, and a fine of from 625 to 6,250 pesetas.

ART. 373. The public official who, not being included in the foregoing article, should open, or consent to the opening, without proper authorization, of closed papers or documents whose custody may have been entrusted to him, shall incur the penalties of *arresto mayor*, temporary special disqualification, and a fine of from 325 to 3,250 pesetas.

The penalties prescribed in the three preceding articles are also applicable to ecclesiastics and to individuals entrusted temporarily with the transmission or custody of documents or papers, by commission of the government or of officials to whom they may have been entrusted by virtue of their office.

CHAPTER IV.

VIOLATION OF SECRETS.

ART. 374. A public official who shall reveal the secrets of which he may have knowledge by virtue of his office, or who shall wrongfully deliver papers or copies of papers which he may have in his charge and that should not be made public, shall incur the penalties of suspension in its minimum and medium degrees and a fine of 325 to 3,250 pesetas.

If serious injury to the public interest should be caused by the revelation or the delivery of the papers, the penalties shall be temporary special disqualification in its maximum degree to perpetual special disqualification and *prisión correccional* in its medium and maximum degrees.

ART. 375. A public official who, by virtue of his office, knows the secrets of an individual and reveals them, shall incur the penalties of suspension, *arresto mayor*, and a fine of from 325 to 3,250 pesetas.

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Chapter V.

DISOBEDIENCE AND REFUSAL OF COOPERATION.

Art. 376. The judicial or administrative officials who shall openly refuse to duly fulfill the sentences, decisions, or orders of a superior authority, issued within the limits of its respective competency, and vested with the legal formalities, shall incur the penalties of temporary special disqualification and a fine of from 375 to 3,750 pesetas.

Notwithstanding the provisions of the preceding paragraph, public officials shall not incur criminal liability for not enforcing an administrative order constituting a manifest, clear, and definite violation of a constitutional precept.

Neither shall public officials exercising authority incur criminal liability who do not enforce an order of the same character wherein any other law is manifestly, clearly, and definitely violated.

Art. 377. The official who may, for any reason whatsoever (not, however, one of those specified in the second paragraph of the preceding article), should have suspended the execution of the orders of his superiors, and should disobey after the former may have disapproved such suspension, shall suffer the penalty of perpetual special disqualification and *prisión correccional* in its minimum and medium degrees.

Art. 378. The public official who, upon the request of the competent authority, does not furnish him the proper cooperation in the administration of justice or other public service, shall incur the penalty of suspension in its minimum and medium degrees, and a fine of from 325 to 3,250 pesetas.

If grave injury to the public interest or to a third person should result from such omission, the penalties shall be those of perpetual special disqualification and a fine of from 375 to 3,750 pesetas.

Art. 379. He who shall refuse or decline to occupy an elective public office without presenting a legal excuse to the proper authority, or after the excuse shall have been rejected, shall incur a fine of from 375 to 3,750 pesetas.

The same penalty shall be incurred by any juror who shall wilfully fail to perform his duties without an accepted excuse; and the expert and the witness who likewise deliberately fail to appear before a court to give their testimony when they have been duly cited to do so.

Chapter VI.

ANTICIPATION, PROLONGATION, AND ABANDONMENT OF PUBLIC DUTIES.

Art. 380. He who shall enter upon the performance of a public employment or office without having taken the oath in due form or

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given the bond required by law, shall be suspended from said employment or office until he complies with the respective formalities, and shall incur a fine of from 325 to 3,250 pesetas.

ART. 381. The public official who shall continue in the exercise of his employment, office, or commission after he must cease therein in accordance with the laws or regulations or special provisions relating thereto, shall be punished with the penalties of temporary special disqualification in its minimum degree and a fine of from 325 to 3,250 pesetas.

ART. 382. The public official guilty of any of the offenses punished in the two preceding articles who should have received any fees or emoluments by reason of his office or commission before he was qualified to exercise them or after he should have discontinued therein shall be furthermore condemned to restore such sums, with a fine of from 10 to 50 per cent of their amount.

ART. 383. The public official who shall abandon his employment without his resignation having been accepted, to the injury of the public interests, shall be punished with the penalty of suspension in its medium and maximum degrees.

If the abandonment of such employment were made in order not to hinder, prosecute, or punish any of the crimes included in titles 1 and 2 of Book II of this code, there shall be imposed upon the culprit the penalty of *prisión correccional* in its minimum to its medium degree, and that of *arresto mayor* if his purpose were not to prevent, prosecute, or punish any other kind of crime.

CHAPTER VII.

USURPATION OF PREROGATIVES AND ILLEGAL APPOINTMENTS TO OFFICE.

ART. 384. The public official who shall infringe upon the prerogatives of the legislative power, either by prescribing regulations or general provisions in excess of his powers or by annulling or suspending the execution of a law, shall incur the penalty of temporary special disqualification and a fine of from 375 to 3,750 pesetas.

ART. 385. The judge who shall arrogate to himself prerogatives belonging to the administrative authorities, or shall prevent the latter from lawfully exercising their own, shall be punished with the penalty of suspension.

The same penalty shall be incurred by every official of the administrative branch of the Government who shall arrogate to himself judicial prerogatives or prevent the execution of an interlocutory decree or decision rendered by a competent judge.

ART. 386. The public official who, being legally warned by writ of inhibition, should continue to act before the question of jurisdiction

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has been decided, shall be punished with a fine of from 325 to 3,250 pesetas.

ART. 387. The administrative or military official who shall give orders or intimations to a judicial authority relating to causes or questions in controversy whose cognizance or decision is of the exclusive competency of courts of justice, shall incur the penalties of suspension in its minimum and medium degrees and a fine of from 625 to 6,250 pesetas.

ART. 388. The ecclesiastic who, when requested by the competent court, shall refuse to forward to the same the files requested for the decision of an appeal made to the civil jurisdiction from a decision rendered by an ecclesiastical court, shall be punished with the penalty of temporary special disqualfication.

A second offense shall be punished with that of perpetual special disqualification.

ART. 389. The public official who knowingly shall recommend or nominate for public office a person who does not have the legal qualifications, shall be punished with the penalty of suspension and a fine of from 325 to 3,250 pesetas.

CHAPTER VIII.

ABUSES AGAINST CHASTITY.

ART. 390. The public official who shall solicit a woman who has applications before him awaiting his decision, or on which he has to make a report or consult his superior, shall be punished with the penalty of temporary special disqualification.

ART. 391. The warden of the prison who shall solicit a woman in his custody shall be punished with the penalty of *prisión correccional* in its medium and maximum degrees.

If the person solicited were the wife, daughter, sister, or a relation by affinity within the same degrees of a person whom he had under his charge, the penalty shall be *prisión correccional* in its minimum to its medium degree.

In every case he shall in addition incur the penalty of temporary special disqualification in its maximum degree to perpetual special disqualification.

CHAPTER IX.

BRIBERY.

ART. 392. The public official who shall receive, directly or through an intermediary, a gift or present, or who shall accept offers or promises for his committing, in the discharge of his office, an act consti-

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tuting a crime, shall be punished with the penalties of *prisión correccional* in its minimum to its medium degree and a fine of from an amount equal up to one three times the value of the gift, without prejudice to the imposition of the penalty pertaining to the crime committed in consideration of the gift or promise, should it have been executed.

ART. 393. The public official who shall receive, directly or through an intermediary, any gift or present, or who shall accept any offer or promise for the execution of an unjust act relating to the discharge of his office, not constituting a crime, and who shall execute it, shall incur the penalty of *presidio correccional* in its minimum and medium degrees and a fine of an amount equal up to one three times the value of the gift. If the unjust act was not actually executed, the penalties of *arresto mayor* in its maximum degree to *presidio correccional* in its minimum degree shall be imposed and a fine of an amount equal up to one double the value of the gift.

ART. 394. When the purpose of the gift received or promised were that the public official should abstain from performing an act which he should perform in the exercise of the duties of his office, the penalties shall be those of *arresto mayor* in its medium to its maximum degree and a fine of an amount equal up to one three times the value thereof.

ART. 395. The provisions of the three preceding articles shall be applicable to jurors, arbiters, arbitrators, experts, mediators (hombres buenos), or any persons whatsoever filling a public office.

ART. 396. The persons criminally liable for the crimes mentioned in the foregoing articles shall incur, in addition to the penalties prescribed therein, that of temporary special disqualification.

ART. 397. The public official who shall accept presents given him in consideration of his official position shall be punished with suspension in its minimum and medium degrees and public censure.

ART. 398.[1] Those who shall corrupt public officials with gifts, presents, offers, or promises, shall be punished with the same penalties as those imposed on the officers suborned, excepting that of disqualification.

ART. 399. If the bribe should be offered in a criminal cause in favor of the criminal, by his spouse or of any ascendant, descendant, brother, or relation by affinity within the same degrees, there shall only be imposed upon the culprit a fine equivalent to the value of the gift or promise.

ART. 400.[2] In every case the gifts or presents shall be confiscated.

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[1] See Order No. 112, Headquarters Division of Cuba, July 20, 1899, page 135.

[2] See Order No. 112, Headquarters Division of Cuba, July 20, 1899, page 135.

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CHAPTER X.

MISAPPROPRIATION OF PUBLIC FUNDS.

ART. 401. The public official who, by reason of his duties, has in his charge public funds or property, and who should take or consent that others should take the same shall be punished:

1. With the penalty of *arresto mayor* in its maximum degree to *presidio correccional* in its minimum degree if the amount taken should not exceed 125 pesetas.

2. With that of *presidio correccional* in its medium and maximum degrees if it should have exceeded 125 and did not exceed 6,250 pesetas.

3. With that of *presidio mayor* if it exceeded 6,250 and did not exceed 125,000 pesetas.

4. With that of *cadena temporal* if it exceeded 125,000 pesetas.

In any case with that of temporary special disqualification in its maximum degree to perpetual absolute disqualification.

ART. 402. The public official who, through inexcusable abandonment or negligence, should enable the peculation of public funds or property, referred to in Nos. 2, 3, and 4 of the foregoing article, by another person, shall incur the penalty of a fine equivalent to the value of the money or property misappropriated.

ART. 403. The official who, to the detriment or hindrance of the public service, shall apply to his own or to foreign purposes the money or property placed under his charge, shall be punished with the penalties of temporary special disqualification and a fine of from 20 to 50 per cent of the amount diverted.

If restitution be not made the penalties prescribed in article 401 shall be imposed on him.

If such unlawful use of the funds were without detriment to or hindrance of the public service, he shall incur the penalties of suspension and a fine of from 5 to 25 per cent of the amount diverted.

ART. 404. The public official who shall give to the funds or property that he administers a public application different from that to which they were destined, shall incur the penalties of temporary disqualification and a fine of from 5 to 50 per cent of the amount diverted, if detriment to or hindrance of the public service to which they were assigned should result therefrom, and otherwise, that of suspension.

ART. 405. The public official who, as a holder of State funds, should be obliged to make a payment and should not do so, shall be punished with the penalties of suspension and a fine of from 5 to 25 per cent of the amount unpaid.

This provision is applicable to the public official who, when required

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by order of the competent authority, should refuse to deliver anything placed under his custody or administration.

The fine shall in such case be graduated according to the value of the thing and shall not be less than 325 pesetas.

ART. 406. The provisions of this chapter are applicable to those who for any reason whatsoever have charge of funds, income, rents, or properties, provincial or municipal, or belonging to an educational or charitable institution, and to the administrators or depositaries of funds attached, sequestrated or deposited by a public authority, even though they belong to individuals.

CHAPTER XI.

FRAUDS AND ILLEGAL EXACTIONS.

ART. 407. The public official who, while taking part, by reason of his office, in any commission of supply, contracts, settlements or liquidations of public effects or funds, shall act therein in concert with the persons interested or speculators, or employ any other artifice to defraud the State, shall incur the penalties of *presidio correccional* in its medium and maximum degrees, and temporary special disqualification in its maximum degree to perpetual special disqualification.

ART. 408. The public official who shall become personally interested, directly or indirectly, in any kind of contract or transaction whatsoever in which he has to take part by reason of his office, shall be punished with the penalties of temporary special disqualification and a fine of from 10 to 50 per cent of the value of the interest which he may have had in the transaction.

This provision is applicable to experts, referees, and private accountants, with regard to the property or things in the appraisal, partition, or award of which they may have taken part; and to guardians of persons and property, and to executors with regard to those of their wards or testamentary beneficiaries.

ART. 409. The public official who shall directly or indirectly exact higher fees than those to which he is entitled by reason of his office, shall be punished with a fine of from double to four times the amount exacted.

A person habitually guilty of this offense shall, in addition, incur the penalty of temporary special disqualification.

ART. 410. The public official who, taking advantage of his office, shall commit any of the crimes specified in Chapter IV, Section II, Title XIII, of this book, shall incur in addition to the penalties prescribed therein that of temporary special disqualification in its maximum degree to perpetual special disqualification.

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Chapter XII.

TRANSACTIONS FORBIDDEN PUBLIC EMPLOYEES.

Art. 411. The judges, officials of the department of public prosecution (ministerio fiscal), the military, administrative or financial heads of a province or district, with the exception of mayors, who, during the discharge of their office, shall directly or indirectly take part in exchange, trade, or gain transactions within the limits of their jurisdiction or command, with regard to objects not the product of their own property, shall be punished with the penalties of suspension and a fine of from 625 to 6,250 pesetas.

This provision is not applicable to those who shall invest their funds in the stock of a bank or any enterprise or company, provided they do not hold therein any office or exercise any direct intervention, either administrative or financial.

Chapter XIII.

GENERAL PROVISION.

Art. 412. For the purposes of this and of the preceding Titles of this book, every person shall be considered a public official who, by the immediate provisions of the law and by popular election or appointment by competent authority, takes part in the exercise of public functions.

TITLE VIII.

CRIMES AGAINST PERSONS.

Chapter I.

PARRICIDE.

Art. 413. He who shall kill his father, mother, or son, whether legitimate or illegitimate, or any other of his ascendants or descendants, or his spouse, shall be punished as a parricide, with the penalty of *cadena perpetua* to death.

Chapter II.

ASSASSINATION.

Art. 414. He who, without being included in the preceding article, shall kill any person, is guilty of assassination if the deed is attended by any of the following circumstances: (1) With treachery; (2) for

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price or promise of reward; (3) by means of flood, fire, or poison; (4) with deliberate premeditation; (5) with vindictiveness, by deliberately and inhumanly increasing the suffering of the person attacked.

A person guilty of assassination shall be punished with the penalty of *cadena temporal* in its maximum degree to death.

ART. 415. The slave who shall kill his master or his master's spouse, or any of the ascendants or descendants of the same living in his household, with the attendance of any of the circumstances specified in the preceding article, shall be punished with the penalty of *cadena perpetua* to death.

The same penalty shall be imposed on the freedman who shall kill his patron, if any of the aforesaid circumstances are attendant

CHAPTER III.

HOMICIDE.

ART. 416. He is guilty of homicide who, not being covered by the provisions of article 413, shall kill another without the accompaniment of any of the attendant circumstances specified in article 414.

A person guilty of homicide shall be punished with *reclusión temporal.*

ART. 417. A slave who, without the attendance of the circumstances specified in article 414, shall kill his master or master's spouse, or any of the ascendants or descendants of the same living in his household, or the person charged by his master with his supervision, custody, or direction, shall be punished with the penalty of *reclusión temporal* in its medium degree to *reclusión perpetua.*

The homicide committed by a freedman upon the person of his patron shall be punished with the same penalty.

ART. 418. When several persons are struggling and fighting together confusedly and tumultuously, a death resulting therefrom, the author of which can not be ascertained but those who inflicted serious wounds are found, the latter shall be punished with the penalty of *prisión mayor.*

Should it not be proven who inflicted such serious wounds upon the person assaulted, there shall be imposed upon everybody who used violence against his person, that of *prisión correccional* in its medium and maximum degrees.

ART. 419. He who gives his assistance to another to commit suicide shall be punished with the penalty of *prisión mayor*; if his assistance should extend to the point of himself taking such person's life, he shall be punished with the penalty of *reclusión temporal.*

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Chapter IV.

PROVISIONS COMMON TO THE THREE PRECEDING CHAPTERS.

Art. 420. The courts, taking into consideration the circumstances of the deed, may punish the frustrated crimes of parricide, assassination, and homicide with a penalty lower by one degree than that which ought to be applied according to article 64.

They may also reduce by one degree, according to the circumstances of the deed, the penalty applicable to an attempt, according to article 65.

Art. 421. The act of discharging a firearm at any person shall be punished with the penalty of *prisión correccional* in its minimum and medium degrees, if all the circumstances of the deed necessary to constitute a frustrated crime or attempt at parricide, assassination, homicide, or any other crime for which a higher penalty is prescribed by any of the articles of this code should not be attendant.

Chapter V.

INFANTICIDE.

Art. 422. The mother who, for the purpose of hiding her shame, shall kill her child before it has reached the age of three days, shall be punished with the penalty of *prisión correccional* in its medium and maximum degrees.

The father or mother of a woman who, in order to hide their daughter's shame, commit this crime, shall be punished with the penalty of *prisión mayor*.

With the exception of these cases, he who kills a newly born infant shall incur, according to the cases, the penalties prescribed for parricide or assassination.

Chapter VI.

ABORTION.

Art. 423. He who shall intentionally cause an abortion shall be punished:

1. With the penalty of *reclusión temporal*, if violence should have been used against the person of the pregnant woman.
2. With that of *prisión mayor* if, even though violence should not have been used, he acted without the consent of the woman.
3. With that of *prisión correccional* in its medium and maximum degrees, if the woman should consent thereto.

Art. 424. He who shall occasion a miscarriage by his violence, without the intention of causing it, shall be punished with *prisión correccional* in its minimum and medium degrees.

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ART. 425. The woman who shall cause her own abortion, or consent to another person doing it, shall be punished with *prisión correccional* in its medium and maximum degrees.

If she should do so to hide her shame, she shall incur the penalty of *prisión correccional* in its minimum and medium degrees.

ART. 426. A physician who, by wrongful use of his skill, shall cause the abortion, or cooperate therein, shall respectively incur in their highest degrees the penalties prescribed in article 423.

The pharmacist who, without the proper doctor's prescription, shall sell a medicine for producing an abortion, shall incur the penalties of *arresto mayor* and a fine of from 325 to 3,250 pesetas.

CHAPTER VII.

PERSONAL INJURIES INFLICTED BY VIOLENCE (LESIONES).

ART. 427. He who shall purposely castrate another shall be punished with the penalty of *reclusión temporal* to *reclusión perpetua.*

ART. 428. Any other mutilation of the person likewise purposely committed shall be punished with the penalty of *reclusión temporal.*

ART. 429. He who shall wound, bruise, or maltreat another shall be punished as guilty of causing serious physical injuries:

1. With the penalty of *prisión mayor* if, as the result of the injuries, the person assaulted became an imbecile, impotent, or blind.

2. With that of *prisión correccional* in its medium and maximum degrees if, as a result of such injuries, the person assaulted should have lost an eye or any principal member, or should have been hindered in the use thereof, or become useless for the occupation in which, up to that time, he had been habitually engaged.

3. With the penalty of *prisión correccional* in its minimum and medium degrees if, as the result of such injuries, the person assaulted should have been deformed, or had lost a member not a principal one, or should have had it rendered useless, or should have been, for a period of more than ninety days, ill, or disabled for his usual occupation.

4. With that of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree if such injuries should have occasioned the assaulted party an illness or disability for work lasting more than thirty days.

If the act should be committed against any of the persons specified in article 413, or with any of the attendant circumstances specified in article 414, the penalties shall be those of *reclusión temporal* in its medium and maximum degrees, in the case of No. 1 of this article, and that of *prisión correccional* in its maximum degree to *prisión mayor* in its minimum degree in the case of No. 2; that of *prisión correccional* in its medium and maximum degrees in the case of No. 3;

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and that of *prisión correccional* in its minimum and medium degrees in the case of No. 4 of the same.

The injuries which a father may cause his child in too severe a correction are not included in the preceding paragraph.

Neither are those which, by way of correction, masters, or the persons under whose charge they have placed their slaves, may cause them, provided that said correction does not exceed the limit of punishment authorized by the regulations.

ART. 430. If the master should inflict or cause to be inflicted upon a slave the injuries included in Nos. 1 and 2 of the preceding article, the civil liability which he shall incur, according to article 17, shall be extended to the obligatory manumission of the injured person and to the obligation to support him during his life.

If the injuries which the master should thus inflict or cause to be inflicted should be of those included in Nos. 3 and 4 of the preceding article, the civil liability shall be extended to the forced alienation of the slave to a person to whom the author of the crime is not bound by any tie of relationship within the fourth degree.

ART. 431. The penalties mentioned in the preceding article are respectively applicable to the person who, without intent to kill, shall cause another any grave injury by knowingly administering to him noxious substances or beverages, or by taking advantage of his credulity or feebleness of mind.

ART. 432. Injuries not included in the preceding articles, which shall render the injured person unable to work for eight days or more, or require the care of a physician for a similar period, shall be less grave, and shall be punished with *arresto mayor* or banishment, and a fine of from 325 to 3,250 pesetas, in the discretion of the courts.

When the less grave injury should be inflicted with manifest intent of outrage or under humiliating circumstances, in addition to *arresto mayor* a fine of from 325 to 3,250 pesetas shall be imposed.

ART. 433. Less grave injuries inflicted on parents, ascendants, guardians of persons or property, teachers, or persons holding public rank or authority, masters, patrons, overseers or major-domos, shall be punished always with *prisión correccional* in its minimum and medium degrees.

ART. 434. When, in the quarrelsome brawl defined in article 418, grave injuries should be inflicted upon any person, and it can not be ascertained who caused them, there shall be imposed the penalty immediately lower than that prescribed for the injuries inflicted, upon everyone who shall appear to have exercised any violence upon the person of the party assaulted.

ART. 435. He who shall mutilate himself or give his consent to his mutilation, for the purpose of securing his exemption from military service, and shall have been declared exempt from such service on

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account of said mutilation, shall incur the penalty of *presidio correccional* in its medium and maximum degrees.

ART. 436. He who should disable another, with his consent, for the purpose mentioned in the preceding article, shall incur the penalty of *presidio correccional* in its minimum and medium degrees.

If he should have done the deed for remuneration, the penalty shall be that next higher in degree than that prescribed in the foregoing paragraph.

If the person guilty of this crime were the father, mother, spouse, brother, or brother-in-law of the person mutilated, the penalty shall be that of *arresto mayor* in its medium degree to *prisión correccional* in its minimum degree.

CHAPTER VIII.

GENERAL PROVISIONS.

ART. 437. The husband who should surprise his wife in adultery and shall kill her or her paramour in the act, or shall inflict upon them any kind of grave physical injury, shall be punished with the penalty of banishment.

If he should inflict upon them injuries of any other kind he shall be exempt from punishment.

These rules are applicable under similar circumstances to fathers with regard to their daughters under 23 years of age and their seducers while the former are living under the paternal roof.

The benefit of this article shall not be extended to those who may have instigated or facilitated the prostitution of their wives or daughters.

CHAPTER IX.

DUELLING.[1]

ART. 438. The authority who shall receive information that a duel is being arranged shall proceed to the detention of the challenger and that of the challenged party, if he shall have accepted the challenge, and shall not set them at liberty until they give their words of honor to desist from their purpose.

He who shall break his word, challenging his adversary anew, shall be punished with the penalties of temporary absolute disqualification from public office and *confinamiento*.

He who shall accept the challenge under similar circumstances shall be punished with that of banishment.

ART. 439. He who shall kill his adversary in a duel shall be punished with the penalty of *prisión mayor*.

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[1] See General Order No. 129, Headquarters Department of Porto Rico, August 24, 1899, page 145.

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If he inflicts upon him the injuries described in number 1, of article 429, with that of *prisión correccional* in its medium and maximum degrees.

In any other case whatsoever the penalty of *arresto mayor* shall be imposed upon the combatants, even though no injury should result.

ART. 440. In place of the penalties prescribed in the preceding article there shall be imposed, in case of homicide, that of *confinamiento;* that of banishment in case of the physical injuries included in number 1, of article 429, and that of a fine of from 325 to 3,250 pesetas in all other cases:

1. Upon the challenged person who should fight because he had not obtained from his adversary an explanation of the reasons for the duel.

2. Upon the challenged person who should fight because of his adversary having refused to accept adequate explanations or proper satisfaction for the offense given.

3. Upon a person insulted who should fight because he had not been able to obtain from the offender an adequate explanation or proper satisfaction demanded.

ART. 441. The penalties prescribed in article 439 shall be imposed in their maximum degrees:

1. Upon the person who shall challenge another to a duel without explaining to his adversary, if he should demand them, the reasons therefor.

2. Upon the person who, having issued a challenge, although he should do so with cause, should reject the adequate explanations or proper satisfaction that his adversary may have offered him.

3. Upon the person who, having done his adversary any injury whatsoever, shall refuse to give him sufficient explanations or proper satisfaction.

ART. 442. He who shall incite another to send or accept a challenge to a duel shall be punished respectively with the penalties prescribed in article 439, if the duel should take place.

ART. 443. He who shall revile or publicly discredit another for having refused a challenge shall incur the penalties prescribed for grave outrage.

ART. 444. The seconds of a duel from which death or physical injuries result shall be respectively punished as principals with premeditation in such offenses, should they have incited the duel or employed any manner of treachery in its conduct or in the arrangement of its conditions.

They shall be considered as accomplices in the same crimes if they should have planned it to the death, or with known advantage on the part of one of the combatants.

They shall incur the penalties of *arresto mayor* and a fine of from 625 to 6,250 pesetas if they should not have done all in their power to

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reconcile the disputants, or should not have agreed to arrange the conditions of the duel in the manner the least dangerous possible to the life of the combatants.

ART. 445. A duel which takes place without the attendance of two or more seconds of legal age for each of the combatants, and without their having selected the arms and arranged all the other conditions thereof, shall be punished:

1. With *prisión correccional*, if neither death nor wounds result therefrom.

2. With the general penalties of this code, if they should result, never falling below that of *prisión correccional.*

ART. 446. There shall likewise be imposed the general penalties of this code, and in addition that of temporary absolute disqualification:

1. Upon the person who shall provoke or give rise to a challenge with pecuniary interest or immoral purpose in view.

2. Upon the combatant who is guilty of treachery in disregarding the conditions agreed upon by the seconds.

TITLE IX.

CRIMES AGAINST CHASTITY.

CHAPTER I.

ADULTERY.

ART. 447. Adultery shall be punished with the penalty of *prisión correccional* in its medium and maximum degrees.

Adultery is committed by the married woman who lies with a man not her husband and by him who lies with her knowing that she is married, although the marriage be afterwards declared void.

ART. 448. Adultery committed by a slave with the wife of his master or a freedman with that of his patron, shall be punished with the penalty of *prisión mayor.*

ART. 449. No penalty shall be imposed for the crime of adultery except upon the complaint of the aggrieved husband.

The latter can enter a complaint against both guilty parties if alive, and never if he had consented to the adultery or pardoned either of the culprits.

ART. 450. The husband may at any time obtain the remission of the punishment imposed upon his wife.

In such case the adulterer's penalty shall also be considered as remitted.

ART. 451. The final judgment rendered in a suit for divorce on the ground of adultery shall have full effect as to penal consequences if it absolves the respondents.

If the judgment is condemnatory of the respondents, however, a

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new proceeding shall be necessary in order to impose penalties upon them.

ART. 452. The husband who shall keep a concubine in his home, or out of it with scandal, shall be punished with the penalty of *prisión correccional* in its minimum and medium degrees.

The concubine shall be punished with banishment.

The provisions of articles 449 and 450 are applicable to the case referred to in this article.

CHAPTER II.

RAPE (VIOLACIÓN) AND WRONGFUL ABUSE OF CHASTITY.

ART. 453. The rape of a woman shall be punished with the penalty of *reclusión temporal.*

Rape is committed by lying with a woman in any of the following cases:

1. If force or intimidation shall be used.
2. If the woman is from any cause deprived of reason or unconscious.
3. If she is under 12 years of age, though none of the circumstances mentioned in the two foregoing numbers be attendant.

ART. 454. The slave who shall violate a woman under whose servitude he may be, or the wife, daughter, or granddaughter of his master, or a woman of the family of any of them, within the fourth degree of relationship and living in their household, shall be punished with the penalty of *reclusión temporal* in its medium degree to *reclusión perpetua.*

ART. 455. Whosoever shall offend lewdly the person of one of either sex with the attendance of any of the circumstances mentioned in article 453, shall be punished, according to the gravity of the case, with the penalty of *prisión correccional* in its medium and maximum degrees.

If the lewd abuse referred to in the foregoing paragraph be committed by the slave against any member of his master's family within the fourth degree of relationship, the penalty shall be that of *prisión correccional* in its maximum degree to *prisión mayor* in its minimum and medium degrees.

CHAPTER III.

CRIMES OF PUBLIC SCANDAL.

ART. 456. He who, being united by an indissoluble religious marriage, should abandon his spouse and contract another marriage according to the civil law with another person, or vice versa, even though the new religious marriage he should contract were not indis-

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soluble, shall incur the penalty of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree and public censure.

ART. 457. Those who in any way should offend modesty or good morals by acts of grevious scandal or enormity, not expressly included in other articles of this code, shall incur the penalties of *arresto mayor* and public censure.

ART. 458. Those who shall preach or proclaim, with publicity and scandal, doctrines contrary to public morals, shall incur the penalty of a fine of from 325 to 3,250 pesetas.

CHAPTER IV.

SEDUCTION AND CORRUPTION OF MINORS.

ART. 459. The seduction of a virgin over 12 and under 23 years of age, committed by a public authority, priest, servant, domestic, guardian, or teacher in charge of her education or guardianship, under any name whatsoever, shall be punished with the penalty of *prisión correccional* in its minimum and medium degrees.

Whosoever shall commit incest with his sister or a descendant of his, even though she were older than 23 years of age, shall incur the same penalty.

Seduction, when committed with fraud by any other person on a woman over 12 years of age but under 23, shall be punished with the penalty of *arresto mayor*.

Any other unchaste abuse committed by the same persons and under similar circumstances shall be punished with the same penalty.

ART. 460. If the seduction were committed by a slave on the person of his mistress, the daughter or granddaughter of his master, or a woman of the family of any one of them related within the fourth degree of relationship and living in their household, the penalty shall be that of *prisión correccional* in its maximum degree to *prisión mayor* in its minimum and medium degrees.

ART. 461. An unchaste abuse committed by a slave, through the employment of fraud, upon a person over 12 years of age but under 23, belonging to the family of his master within the fourth degree of relationship, shall be punished with the penalty of *prisión correccional* in its minimum and medium degrees.

ART. 462. Whosoever shall habitually, or taking advantage of his authority or another's trust, promote or facilitate the prostitution or corruption of minors to satisfy the lusts of another, shall be punished with the penalty of *prisión correccional* in its minimum and medium degrees; and temporary absolute disqualification if he were an authority.

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CHAPTER V.

ABDUCTION (RAPTO).

ART. 463. The abduction of a woman, executed against her will and with unchaste designs, shall be punished with the penalty of *reclusión temporal.*

The same penalty shall be imposed in all cases if the person abducted were under 12 years of age.

ART. 464. If the crime foreseen in the preceding article should be committed by a slave against the person of his mistress, or the wife, daughter, or granddaughter of his master, or a woman belonging to the family of any of them, within the fourth degree of relationship, and living in their household, he shall be punished with the penalty of *reclusión temporal* in its medium degree to *reclusión perpetua.*

ART. 465. The abduction of a virgin under 23 years of age and over 12, executed with her assent, shall be punished with the penalty of *prisión correccional* in its minimum and medium degrees.

The same crime committed by a slave against any of the persons mentioned in the preceding article shall be punished with the penalty of *prisión correccional* in its maximum degree to *prisión mayor* in its minimum degree.

ART. 466. Those guilty of the crime of abduction who shall not give the whereabouts of the person abducted, or satisfactory explanation of her death or disappearance, shall be punished with the penalty of *cadena perpetua.*

CHAPTER VI.

PROVISIONS COMMON TO THE PRECEDING CHAPTERS.

ART. 467. Criminal proceedings for seduction can only be instituted on the complaint of the offended person, or her parents, grandparents, or guardian.

In order to proceed in cases of rape and in those of abduction committed with unchaste design, the denunciation of the interested party, of her parents, grandparents, or guardians, shall suffice, even though they do not present a formal petition to the judge.

If the person injured should, by reason of her age or mental condition, lack the requisite personality to appear in court, and should, besides, be wholly unprotected, not having parents, grandparents, brothers, or guardian of person or property to denounce the crime, the *procurador síndico* or the public prosecutor may do so, acting on the strength of public rumor.

In all the cases of this article the express or implied pardon of the

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offended party shall extinguish penal action or the penalty if it should have been already imposed on the culprit.[1]

The pardon shall never be presumed, except by the marriage of the offended party with the offender.

ART. 468. Those guilty of rape, seduction, or abduction shall be condemned also, by way of indemnification—

1. To endow the injured woman, if she were unmarried or a widow.
2. To emancipate her if she were under his servitude.
3. To acknowledge the offspring if the character of its origin should not prevent it.
4. In all cases to support the offspring.

ART. 469. The ascendants, guardians of persons or property, masters, patrons, teachers, and any other persons whatsoever, who, taking advantage of their authority or trust, cooperate as accomplices in the perpetration of the crimes included in the four preceding chapters, shall be punished as principals therein.

Teachers, or those charged in any manner whatsoever with the education or management of the young, shall, furthermore, be condemned to the penalty of temporary special disqualification in its maximum degree to perpetual special disqualification.

ART. 470. Those included in the preceding article, and any others whatsoever, guilty of the corruption of minors in the interest of a third person, shall be punished with the penalties of interdiction in the right to exercise guardianship and to be members of the family council.

TITLE X.

CRIMES AGAINST HONOR.

CHAPTER I.

CALUMNY.

ART. 471. Calumny is the false imputation of a crime of those subject to prosecution at the instance of the Government (*de oficio*).

ART. 472. Calumny put into writing and made public shall be punished with the penalties of *prisión correccional* in its minimum and medium degrees and a fine of from 1,250 to 12,500 pesetas if a grave crime be charged, and with those of *arresto mayor* and a fine of from 625 to 6,250 pesetas if the crime charged be less grave.

ART. 473. When the calumny is not made public and put into writing it shall be punished—

1. With the penalty of *arresto mayor* in its maximum degree and a fine of from 625 to 6,250 pesetas, if a grave crime be charged.

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[1] See Order No. 150, Headquarters Division of Cuba, April 10, 1900, page 139.

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2. With that of *arresto mayor* in its minimum degree and a fine of from 325 to 3,250 pesetas, if a less grave crime be charged.

ART. 474. A person accused of calumny shall be exempt from all punishment if he shall prove the criminal act charged.

The sentence establishing the calumny shall be published in the official periodicals if the calumniated person should request it.

CHAPTER II.

CONTUMELY.

ART. 475. Contumely includes every expression pronounced or action executed with a view to dishonoring or holding up to contempt another person.

ART. 476. The following are grave acts of contumely:

1. The imputation of a crime of those subject to prosecution at the instance of the Government (*de oficio*).

2. That of a vice or a lack of morality the consequences of which might considerably damage the fame, credit, or interest of the person offended.

3. Acts of contumely which by their nature, occasion, or circumstance are ignominious in public opinion.

4. Those which reasonably deserve the classification of grave acts in view of the condition, dignity, and personal circumstances of the offended party and the offender.

ART. 477. Grave acts of contumely put into writing and made public shall be punished with the penalties of banishment in its medium to its maximum degree and a fine of from 625 to 6,250 pesetas.

If said circumstances should not be attendant they shall be punished with the penalties of banishment in its minimum to its medium degree and a fine of from 325 to 3,250 pesetas.

ART. 478. Slight acts of contumely shall be punished with the penalties of *arresto mayor* in its minimum degree and a fine of from 325 to 3,250 pesetas, if they are in writing and should be made public.

If these circumstances are not attendant they shall be punished as misdemeanors.

ART. 479. A person charged with acts of contumely shall not be allowed to furnish evidence tending to prove the truth of his imputations, unless they shall have been directed at public officers about matters concerning the performance of their duties.

In such case the defendant shall be acquitted if he prove the truth of his imputations.

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Chapter III.

GENERAL PROVISIONS.

Art. 480. The crime of calumny or contumely may be committed not only openly, but by means of allegories, caricatures, emblems, or allusions.

Art. 481. Calumny and contumely shall be considered as having been committed in writing and made public when they are circulated through the medium of printed, lithographed, or engraved papers, by placards or lampoons posted in public places, or by manuscript communicated to more than ten persons.

Art. 482. Any person accused of the crime of calumny or contumely, covert or equivocal, who shall refuse to furnish the court with a satisfactory explanation thereof, shall be punished as guilty of open calumny or contumely.

Art. 483. The editors or printers of newspapers in which the calumnies or contumelies may have been published, shall insert therein, within the period fixed by law, or, in the absence thereof, by the court, the apology or the condemnatory sentence, if the offended party should so require.

Art. 484. An action for calumny or contumely may be brought by the ascendants, descendants, spouses, and brothers of the deceased offended party, provided the calumny or contumely reflects on them, and in any case by the heir.

Art. 485. The action for calumny or contumely shall also be proper when they should have been committed by means of publications in a foreign country.

Art. 486.[1] No one can institute an action for calumny or contumely committed in judicial proceedings without the previous permission of the judge or tribunal having cognizance thereof.

No one shall be punished for calumny or contumely unless on complaint of the offended party, except when the offense is directed against the public authority, corporations, or determined classes in the State, and in the cases prescribed in Chapter V of Title III of this book.

A person guilty of calumny or contumely against individuals shall be relieved from the penalty imposed by the pardon of the offended party.

For the purposes of this article the sovereigns and princes of friendly or allied nations, their diplomatic agents, and foreigners with a public character, that, according to treaties, should be included in this provision, shall be considered as authorities.

A special initiative of the government must precede any action relating to the cases mentioned in the foregoing paragraph.

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[1] See Order No. 125, Headquarters Division of Cuba, July 31, 1899, page 137; and Order No. 239, June 12, 1900, page 142.

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TITLE XI.

CRIMES AGAINST THE CIVIL STATUS OF PERSONS.

CHAPTER I.

FICTITIOUS REPRESENTATIONS OF CHILDBIRTH AND USURPATION OF CIVIL STATUS.

ART. 487. Fictitious representations of childbirth and the substitution of one child for another shall be punished with the penalties of *presidio mayor* and a fine of from 625 to 6,250 pesetas.

The same punishments shall be imposed on any person who should hide or expose a legitimate child with the intent to make him lose his civil status.

ART. 488. The physician or public official who, in taking advantage of his profession or office, should cooperate in the commission of any of the crimes mentioned in the foregoing article shall incur the same penalties, and, furthermore, that of temporary special disqualification.

ART. 489. He who shall usurp the civil status of another shall be punished with the penalty of *presidio mayor*.

CHAPTER II.

CELEBRATION OF ILLEGAL MARRIAGES.

ART. 490. Any person who shall contract a second or subsequent marriage without the prior marriage being lawfully dissolved, shall be punished with the penalty of *prisión mayor*.

ART. 491. He who, notwithstanding the existence of an impediment for which no dispensation can be had, shall contract a marriage, shall be punished with the penalty of *prisión correccional* in its medium and maximum degrees.

ART. 492. He who shall contract a marriage, notwithstanding the existence of an impediment for which dispensation could be had, shall be punished with a fine of from 325 to 3,250 pesetas.

If through his own fault he shall not, after dispensation within the period fixed by the court, have caused the marriage to be validated, he shall be punished with the penalty of *prisión correccional* in its medium and maximum degrees, from which penalty he shall be released when the marriage is made valid.

ART. 493. He who shall cause, through surprise or deceit, a parish priest to take part in the celebration of an illegal marriage, valid, however, under the provisions of the church, shall be punished with the penalty of *prisión correccional*.

If he should have caused him to take part through violence or intimidation, he shall be punished with that of *prisión menor*.

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ART. 494. Any minor who shall contract a marriage without the consent of his or her parents, or of the persons who for such purposes stand in their stead, shall be punished with *prisión correccional* in its minimum and medium degrees.

The culprit shall be pardoned as soon as the parents or persons referred to in the foregoing paragraph approve the marriage contracted.

ART. 495. The widow who shall marry before three hundred and one days have elapsed from the death of her husband, or before she is confined, if she were pregnant at the time of his death, shall incur the penalties of *arresto mayor* and a fine of from 125 to 1,250 pesetas.

The same penalty shall be incurred by a woman whose marriage should have been declared null and void if she should marry before her confinement or before three hundred and one days have elapsed from her legal separation.

ART. 496. He who, without previous dispensation, shall contract a marriage with one of his adopted children or descendants shall be punished with the penalty of *arresto mayor*.

ART. 497. The guardians who, before the judicial approval of his accounts, should contract a marriage with or should give his consent to his children or descendants contracting it with the person whose wardship he should have or should have had, unless the father of the latter should have duly authorized such marriage, shall be punished with the penalties of *prisión correccional* in its medium and maximum degree and a fine of from 325 to 3,250 pesetas.

ART. 498. The ecclesiastical or civil authority who shall perform a marriage forbidden by law, or in regard to which there is any impediment which can not be removed by dispensation, shall be punished with the penalty of suspension in its medium and maximum degrees and a fine of from 625 to 6,250 pesetas.

If the impediment could be removed by dispensation the penalties shall be those of banishment in its minimum degree and a fine of from 325 to 3,250 pesetas.

ART. 499. In all the cases of this chapter the person who contracted marriage by deceit shall be adjudged to endow, according to his means, the woman who contracted the marriage in good faith.

TITLE XII.

CRIMES AGAINST LIBERTY AND SECURITY.

CHAPTER I.

UNLAWFUL DETENTIONS.

ART. 500. Any private person who shall lock up or detain another, or in any way deprive him of his liberty, reserving the provisions of article 502, shall be punished with the penalty of *prisión mayor*.

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He who shall furnish a place for the commission of the crime shall incur the same penalty.

If the culprit should release the person locked up or detained within three days after his detention had commenced, without obtaining the object he had in view and without the commencement of criminal proceedings, the penalty shall be *prisión correccional* in its minimum and medium degrees and a fine of from 325 to 3,250 pesetas.

ART. 501. The crime referred to in the preceding article shall be punished with the penalty of *reclusión temporal*—

1. If the imprisonment or detention should have lasted more than twenty days.

2. If it should have been committed by the false assumption of public authority.

3. If grave physical injuries should have been inflicted on the person imprisoned or detained or if he should have been threatened with death.

ART. 502. Any person who, cases permitted by law being excepted, shall without sufficient reason apprehend or detain a person in order to turn him over to the authorities, shall be punished with the penalties of *arresto menor* and a fine of from 325 to 3,250 pesetas.

This article is not applicable to those apprehending the slaves or serfs of others, who are fugitives, in order to deliver them to their masters or the authorities, in the cases prescribed in the regulations, provided that the delivery be made within the term of seventy-two hours after the capture.

Fugitives shall be considered those of whose flight notice shall have been given by their masters or patrons to the local authorities, by publication in the newspapers, or that are found three leagues away from the farms upon which they were employed, without a permit from their master, manager, or overseer or with a permit whose term of license had already expired.

CHAPTER II.

THE ABDUCTION OF INFANTS.

ART. 503. The abduction of a child under 7 years of age shall be punished with the penalty of *cadena temporal.*

ART. 504. The same penalty shall be incurred by any person who, being in charge of the person of a minor, shall not deliver him to his parents or guardians or give a satisfactory explanation concerning his disappearance.

ART. 505. He who shall induce a minor, but over the age of 7, to abandon the house of his parents, guardians, or persons in charge of him, shall be punished with the penalties of *arresto mayor* and a fine of from 325 to 3,250 pesetas.

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Chapter III.

THE ABANDONMENT OF CHILDREN.

Art. 506. He who shall abandon a child under 7 years of age shall be punished with the penalties of *arresto mayor* and a fine of from 325 to 3,250 pesetas.

If on account of the circumstances of the abandonment the death of a child is caused, the culprit shall be punished with the penalty of *prisión correccional* in its medium and maximum degrees.

If the child's life should have only been endangered, the punishment shall also be that of *prisión correccional*, but in its minimum and medium degrees.

The provisions of the two foregoing paragraphs must be considered without prejudice to the punishment of the deed as may be proper if it should constitute a graver crime.

Art. 507. He who being intrusted with the rearing or education of a minor should place him in charge of any public institution or of another person, without the assent of the person who had confided said minor to him, or of the public authorities in his absence, shall be punished with a fine of from 325 to 3,250 pesetas.

Chapter IV.

PROVISION COMMON TO THE THREE PRECEDING CHAPTERS.

Art. 508. He who shall unlawfully detain another person or abduct a child under the age of 7 years, and should not give an account of his whereabouts, or should not give evidence of having set him free, shall be punished with the penalty of *cadena temporal* in its maximum degree to *cadena perpetua*.

He who shall abandon an infant under 7 years of age shall incur the same penalty, if he does not give evidence that he abandoned the infant without committing another crime.

Chapter V.

FORCIBLE ENTRY OF DWELLINGS.

Art. 509. Any private individual who shall enter another's dwelling against the will of the tenant thereof shall be punished with *arresto mayor* and a fine of from 325 to 3,250 pesetas.

If the deed were committed with violence or intimidation, the penalties shall be *prisión correccional* in its medium and maximum degrees and a fine of from 325 to 3,250 pesetas.

Art. 510. The provisions of the foregoing article are not applicable to a person who enters another's dwelling in order to avoid a grave injury to himself, to the tenants, or to a third person; nor to him who

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should enter the same in order to render some service to humanity or justice.

ART. 511. The provisions of this chapter are not applicable to cafés, taverns, inns, and other public houses while they are open.

CHAPTER VI.

THREATS AND ACTS OF COMPULSION.

ART. 512. He who shall threaten another or his family with regard to their persons, honor, or property with an injury amounting to a crime shall be punished—

1. With the penalty next lower in degree than that prescribed by law for the crime with which the person is threatened, if the threat should have been made by exacting a sum of money or imposing some other condition, even though not illegal, provided the culprit attained his purpose. If the purpose were not attained, with the penalty lower by two degrees.

The penalty shall be imposed in its maximum degree if the threats should be made in writing or through the medium of an emissary.

2. With the penalties of *arresto mayor* and a fine of from 325 to 3,250 pesetas, if the threat should have been unconditional.

ART. 513. Threats of an injury not constituting a crime, made in the manner mentioned in No. 1 of the foregoing article, shall be punished with the penalty of *arresto mayor*.

ART. 514. In all the cases of the two foregoing articles the person making the threat may also be sentenced to give security not to offend the person threatened, and in default thereof to the penalty of banishment.

ART. 515. Any person who, without lawful authorization, shall with violence prevent another from doing what is not prohibited by law, or shall compel him to do what he does not wish, whether just or unjust, shall be punished with the penalties of *arresto mayor* and a fine of from 325 to 3,250 pesetas.

ART. 516. He who with violence shall appropriate a thing belonging to his debtor in order to pay himself therewith shall be punished with the penalties of *arresto mayor* in its minimum degree and a fine equivalent to the value of the thing, but in no case lower than 325 pesetas.

CHAPTER VII.

DISCOVERY AND REVELATION OF SECRETS.

ART. 517. He who in order to discover another's secrets shall take possession of his papers or letters and divulge such secrets, shall be punished with the penalties of *prisión correccional* in its minimum and medium degrees and a fine of from 325 to 3,250 pesetas.

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If he does not disclose them the penalties shall be *arresto mayor* and a fine of from 325 to 3,250 pesetas.

This provision is not applicable to husbands, parents, guardians, or persons acting in their stead with regard to papers or letters belonging to their wives, children, or minors under their custody.

ART. 518. The manager, clerk, or servant who in such capacity may be informed of his employer's secrets, and shall divulge them, shall be punished with the penalties of *arresto mayor* and a fine of from 325 to 3,250 pesetas.

ART. 519. The manager, employee, or laborer in a factory or other industrial concern who, to the prejudice of the owner's interests, shall disclose the secrets of his industry, shall be punished with the penalties of *prisión correccional* in its minimum and medium degrees and a fine of from 325 to 3,250 pesetas.

TITLE XIII.

CRIMES AGAINST PROPERTY.

CHAPTER I.

ROBBERY.

ART. 520. Those who, with intent of profiting thereby, shall take possession of the personal property of another with violence or intimidation of the person or by employing force with regard to the personal property, are guilty of the crime of robbery.

ART. 521. A person guilty of robbery with violence or intimidation of the person shall be punished:

1. With the penalty of *cadena perpetua* to death if on account or on the occasion of the robbery there results homicide.

2. With the penalty of *cadena temporal* in its medium degree to *cadena perpetua*, if the robbery should be accompanied by violation or mutilation caused purposely, or if on account or on the occasion of the robbery any of the injuries punished in No. 1 of article 429 should be inflicted, or should the robbed person be detained for ransom or for more than one day.

3. With the penalty of *cadena temporal* if on the same account or occasion some of the injuries punished in No. 2 of the article mentioned in the foregoing number should be inflicted.

4. With the penalty of *presidio mayor* in its medium degree to *cadena temporal* in its minimum degree if the violence or intimidation that should have attended the robbery were of a gravity manifestly unnecessary for its execution; or if in the perpetration of the crime injuries of the kind mentioned in Nos. 3 and 4 of said article 429 should have been inflicted by the delinquents upon persons not responsible for the crime.

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5. With the penalty of *presidio correccional* to *presidio mayor* in its medium degree in other cases.

ART. 522. If the crimes referred to in Nos. 3, 4, and 5 of the foregoing article should have been committed in an uninhabited place and by a gang, or by attacking a moving train, or by entering passenger compartments, or by surprising passengers in any manner whatsoever within the cars, the penalty shall be imposed on the culprits in the maximum degree.

Upon the chief of the gang, if it should be wholly or partially armed, there shall be imposed, in the same cases, the penalty next higher.

ART. 523. A gang exists if more than three armed malefactors unite in the robbery.

The malefactors present at the commission of a robbery in an uninhabited place and by a gang shall be punished as principals in any of the outrages committed by the gang if there is no evidence that they endeavored to prevent them.

The malefactor who habitually travels with the gang shall be presumed to have been present at all the attempts committed by it, unless there be proof to the contrary.

ART. 524. The attempt and frustrated crime of robbery, committed with the crime mentioned in No. 1 of article 521, shall be punished with the penalty of *cadena temporal* in its maximum degree to *cadena perpetua*, unless the homicide committed should deserve a higher penalty according to the provisions of this code.

ART. 525. He who in order to defraud another should force him by violence or intimidation to sign, execute, or deliver a public instrument or document shall be punished as guilty of robbery with the penalties respectively prescribed in this chapter.

ART. 526. Those who should with arms rob an inhabited house or public building, or one dedicated to religious worship, shall be punished with the penalty of *presidio mayor* in its medium degree to *cadena temporal* in its minimum degree, if the value of the articles should exceed 1,250 pesetas and the malefactors should have entered the house or building where the robbery was committed, or any of its dependencies, by one of the following means:

1. By wrongful entry.[1]

2. By breaking through a wall, ceiling, or floor, or by forcing a door or window.

3. By making use of false keys, picklocks, or other similar instruments.

4. By breaking open doors, wardrobes, etc., coffers, or any other kind of furniture, or locked or sealed objects, or by taking the same away to be broken or forced open outside the place of robbery.

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[1] See article 10, No. 23.

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5. By making use of fictitious names or simulation of authority.

If the malefactors should not carry arms, and the extent of the robbery should exceed 1,250 pesetas, the penalty next lower shall be imposed.

The same rule shall be observed if the malefactors do carry arms but the extent of the robbery does not exceed 1,250 pesetas.

If they do not carry arms, nor does the extent of the robbery exceed 1,250 pesetas, the penalty prescribed in the two preceding paragraphs shall be imposed on the culprits in its minimum degree.

ART. 527. If the crimes referred to in the foregoing articles should have been committed in an uninhabited place and by a gang, or if the property robbed should have been articles dedicated to religious worship, the penalty shall be imposed on the culprits in its maximum degree.

ART. 528. Any lodging that shall constitute the dwelling place of one or more persons shall be considered an inhabited house, even if they should be accidentally absent therefrom when the robbery takes place.

As dependencies of an inhabited house or public building, or one dedicated to religious worship, shall be considered: Its courts, corrals, shops, granaries, mows, stables, stalls, and other divisions or inclosures contiguous to the building, having interior communication therewith, so that the whole constitutes one entire place.

The orchards and other grounds destined to the cultivation and product of the soil shall not be included in the foregoing paragraph, even if they are fenced in, adjoin the building and have interior communication therewith.

ART. 529. If the robbery referred to in article 526 should have been committed in a dependency of an inhabited house, public building, or one dedicated to religious worship, by means of the culprits entering the same by climbing an exterior wall, and should have been limited to the taking of nutritious grains, products, or wood, and the value of the things robbed should not exceed 75 pesetas, there shall be imposed on the culprits the penalty of *arresto mayor* in its medium degree to *prisión correccional* in its minimum degree.

ART. 530. The robbery committed in an uninhabited place, or in a building that is not one of those mentioned in the first paragraph of article 526 if the value of the objects robbed should exceed 1,250 pesetas, shall be punished with the penalty of *presidio correccional* in its medium and maximum degrees, provided that any of the following circumstances be attendant:

1. Wrongful entry.

2. The breaking of walls, roofs, or floors, the forcing of outer doors or windows.

3. Having made use of false keys, picklocks, or other similar instruments to enter the place of the robbery.

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4. The forcing of doors, wardrobes, etc., coffers, or any other kind of furniture, or locked or sealed objects.

5. The removal of the locked or sealed objects referred to in the preceding paragraph, even though they be broken into outside the place of the robbery.

If the value of the objects robbed does not exceed 1,250 pesetas, the penalty next lower shall be imposed.

ART. 531. In the cases of the preceding article, a robbery not involving a value of more than 75 pesetas shall be punished with *arresto mayor* in its medium and maximum degrees.

If the things robbed were of those mentioned in article 529, the penalty next lower shall be imposed.

ART. 532. The robbery referred to in articles 529, 530, and 531, shall be punished with the penalty next higher if the culprit were a recidivist two or more times.

ART. 533. He who shall have in his possession picklocks or other tools specially designed to commit the crime of robbery, and shall not give satisfactory explanation as to the manner he acquired or kept them, shall be punished with the penalty of *arresto mayor* in its maximum degree to *presidio correccional* in its minimum degree.

The same penalty shall be incurred by those who manufacture said tools. If they be locksmiths, the penalty of *presidio correccional* in its medium and maximum degrees shall be imposed.

ART. 534. The following are considered as false keys:

1. The tools referred to in the preceding article.

2. True keys stolen from the owner.

3. Any others not used by the owner in opening the lock the criminal may have tampered with.

CHAPTER II.

THEFT.

ART. 535. The following are guilty of theft:

1. Those who with intent of gain and without violence or intimidation against the person or force against things shall take another's personal property without the owner's consent.

2. Those who finding something lost and, knowing who its owner is, appropriate it with the intent of profit.

3. Those committing damage to property, who remove or utilize the result or the object of the damage so caused, except in the cases provided for in Nos. 1, 2, and 3 of article 615; No. 1 of article 618 and articles 619, 621, and 626.

ART. 536. Those guilty of theft shall be punished:

1. With the penalty of *presidio correccional* in its medium and maximum degrees, if the value of the stolen property should exceed 6,250 pesetas.

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2. With the penalty of *presidio correccional* in its minimum and medium degrees, should it not exceed 6,250 pesetas and be more than 1,250.

3. With *arresto mayor* in its medium degree to *presidio correccional* in its minimum degree, should it not exceed 1,250 pesetas and be more than 250 pesetas.

4. With *arresto mayor* to its fullest extent, should it be more than 25 but not exceed 250 pesetas.

5. With *arresto mayor* in its minimum and medium degrees, if it should not exceed 25 pesetas, or even though it should exceed said amount, if the theft is of nutritious grains, fruits, or wood, provided it does not exceed 50 pesetas.

ART. 537. The following shall also be punished with the penalty of *arresto mayor* in its minimum and medium degrees:

He who shall enter an inclosed estate or a place where trespass is forbidden, to hunt or fish, employing violence or intimidation against the person or force against things.

He who under the same conditions shall hunt or fish on an estate or fields without the permission of the owner, employing means forbidden by the ordinances.

If the circumstances mentioned in the two foregoing paragraphs shall occur simultaneously, the culprit shall be punished with the penalty of *arresto mayor* in its maximum degree.

ART. 538. The theft shall be punished with penalties next higher in degree than those respectively prescribed in the two preceding articles—

1. If the stolen objects were things dedicated to worship or if the deed were committed during a religious ceremony or in an edifice dedicated to the celebration thereof.

2. If the thief were a domestic or if the deed were committed through a gross breach of trust.

3. If the culprit were a recidivist two or more times.

CHAPTER III.

APPROPRIATION OF SLAVES BELONGING TO OTHERS AND FLIGHT OF SLAVES.

This chapter includes articles 539 to 544, which are not applicable, slavery having been abolished in Cuba by the law of February 13, 1880, and "patronage" by the royal decree of October 7, 1886.

CHAPTER IV.

USURPATION.

ART. 545. Whosoever with violence or intimidation against persons shall occupy any real property or usurp a property right of another

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shall incur, in addition to the penalties which he may have incurred for the violences committed by him, a fine of from 50 to 100 per cent of the profit he may have derived therefrom, never being less than 325 pesetas.

Should it not be possible to estimate said profit, a fine of from 325 to 3,250 pesetas shall be imposed.

ART. 546. Whosoever shall alter boundaries or landmarks of towns or estates or any other marks intended to fix the limits of adjoining estates, shall be punished with a fine of from 50 to 100 per cent of the profit he may have derived or might have been able to derive therefrom.

Should it be impossible to estimate said profit, a fine of from 325 to 3,250 pesetas shall be imposed upon him.

CHAPTER V.

FRAUDS.

SECTION I.—*Absconding and criminal failure and insolvency.*

ART. 547. He who shall abscond with his property for the purpose of defrauding his creditors shall be punished with the penalty of *presidio mayor*, if he were a merchant, and otherwise with that of *presidio correccional* in its maximum degree to *presidio mayor* in its medium degree.

ART. 548. The bankrupt merchant who should be declared guilty of fraudulent insolvency in accordance with the Code of Commerce, shall be punished with the penalty of *presidio correccional* in its maximum degree to *presidio mayor* in its medium degree.

ART. 549. The bankrupt merchant who should be declared guilty of culpable insolvency through any of the causes mentioned in article 1005 of the Code of Commerce, shall incur the penalty of *prisión correccional* in its minimum and medium degrees.

Bankrupt merchants who should not have kept books of account in the manner and with all the requisites prescribed in the second section of Title II, Book I, of the Code of Commerce, if, owing to the defects and omissions therein, prejudice should have resulted to a third person, and those who should not have declared themselves in bankruptcy within the period and in the manner prescribed in article 1017 of said code, shall be punished with the penalty of *arresto mayor*.

ART. 550. In the cases of the two preceding articles, if the loss occasioned to the creditors should not reach 10 per cent of the respective credits, the penalties next lower than those prescribed in said articles shall be imposed upon the bankrupt.

If the loss should exceed 50 per cent, the penalties prescribed in the said articles shall be imposed in their maximum degrees.

ART. 551. The penalties prescribed in the three preceding articles

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are applicable to merchants, even if not registered, if they are habitually engaged in trade.

ART. 552. Those who shall commit any of the acts mentioned in article 1010 of the Code of Commerce shall be punished as accomplices in the crime of fraudulent insolvency.

ART. 553. The bankrupt not a merchant whose insolvency should be the result, in whole or in part, of any of the following causes, shall incur the penalty of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree:

1. To have had domestic personal expenses in excess of and out of proportion to his means, considering the circumstances of his rank and family.

2. To have lost in any kind of games sums in excess of what an orderly father of family should risk by way of recreation in that sort of entertainment.

3. To have suffered losses in heavy bettings, fictitious purchases and sales, or in any other exchange transactions whose success depends exclusively on chance.

4. To have disposed of goods at a notable loss whose purchase price was still unpaid.

5. To delay in declaring his bankruptcy when his liabilities are three times his assets.

ART. 554. The bankrupt, not a merchant, whose insolvency should have resulted in whole or in part from any of the following acts, shall incur the penalty of *presidio correccional* in its maximum degree to *presidio mayor* in its minimum degree:

1. From having included fictitious expenses, losses, or debts, or concealed properties or rights in the statement of liabilities, the report of his assets, or the reports presented by him to the judicial authority.

2. From having appropriated or diverted properties belonging to others which had been placed on deposit with him or given him on commission or for his management.

3. From having simulated the alienation or any encumbrance of, property, debts, or obligations.

4. From having acquired properties for a valuable consideration in the name of another person.

5. From having anticipated, to the prejudice of creditors, payments not due until a period after the declaration of bankruptcy.

6. From having diverted after the declaration of bankruptcy securities belonging to the assets.

ART. 555. The provisions contained in article 550 are applicable to the two preceding articles.

ART. 556. The following shall be punished as accomplices in the crime of fraudulent insolvency committed by a debtor not engaged in commerce who shall perform any of the following acts:

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1. Enter into an understanding with the bankrupt who is not a merchant in order to create a fictitious liability as against him, or to increase any liability of his, or to alter its character or date, for the purpose of obtaining preference in fraud of the other creditors, even though this should take place before the declaration of bankruptcy.

2. Assist the bankrupt who is not a merchant in the concealment or conveyance of his property.

3. Conceal from the trustees of the bankrupt who is not a merchant the existence of property belonging to him which was in the possession of the culprit, or delivered to the bankrupt instead of to said trustees.

4. Make private agreements with the bankrupt who is not a merchant in fraud of other creditors.

ART. 557. The penalties prescribed in this chapter shall be imposed in their maximum to their minimum degrees upon the bankrupt who is or is not a merchant who should not restore any deposit made with him under stress or necessity (*deposito miserable ó necesario*).

SECTION II.—*Swindles and other false pretenses.*

ART. 558. A person who shall defraud another in the substance, quantity, or quality of things he may deliver to him by virtue of an obligation shall be punished:

1. With the penalty of *arresto mayor* in its minimum and medium degrees, if the fraud should not exceed 250 pesetas in amount.

2. With that of *arresto mayor* in its medium degree to *presidio correccional* in its minimum degree if it should exceed 250 pesetas and not be more than 6,250 pesetas.

3. With that of *presidio correccional* in its minimum and medium degrees if it should exceed 6,250 pesetas.

ART. 559. The following shall incur the penalties of the preceding article:

1. He who shall defraud others by using a fictitious name, by assuming fictitious power, influence, or attributes, or by pretending to possess imaginary property, credit, commission, enterprises, or business, or by using any other similar deceit that is not one of those mentioned in the following cases.

2. The silversmiths and jewelers who shall commit a fraud by altering the quality, alloy, or weight of articles pertaining to their art or commerce.

3. The traders who shall defraud others by using short weights or measures in the sale of the objects of their traffic.

4. Those who shall commit a fraud under the false pretext of having had to pay an unlawful gratuity to public employees, without prejudice to the action for calumny pertaining to the latter.

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The penalties shall be imposed in their maximum degrees on the persons mentioned in the three preceding numbers.

5. Those who, to the prejudice of another, shall appropriate or misapply any money, goods, or any kind of personal property which they may have received as a deposit on commission, administration, or in any other character producing the obligation to deliver or return the same, or who shall deny having received it.

The penalties shall be imposed in their maximum degrees in case of deposits made under stress or necessity.

6. Those who shall commit any fraud by taking advantage of another's signature in blank and by means thereof filling up any document to his prejudice, or that of a third person.

7. Those who shall commit fraud by causing another to subscribe a document by the use of deceit.

8. Those who shall employ fraud in gambling in order to insure winning.

9. Those who shall commit fraud by withdrawing, concealing, or destroying, in whole or in part, any process, record, document, or any other paper of any character whatsoever.

If the same crime should be committed without the intent to defraud, a fine of from 325 to 3,250 pesetas shall be imposed on the author.

ART. 560. The crimes referred to in the three preceding numbers shall be punished with the penalty respectively higher by one degree, if the culprits should be two or more times recidivists in the same or a similar kind of crime.

ART. 561. He who, pretending to be the owner of real property, should convey, rent, encumber, or pledge it, shall be punished with the penalty of *arresto mayor* in its minimum and medium degrees, and a fine of from an amount equal up to three times the amount of the loss he may have caused.

The same penalty shall be incurred by the person who shall dispose of any property as free and clear knowing it to be encumbered.

ART. 562. The following shall incur the penalties prescribed in the foregoing article:

1. The owner of any personal property who shall abstract it from the person who has it legitimately in his possession to the prejudice of the same or of a third person.

2. He who shall execute a fictitious contract to the prejudice of another.

ART. 563. Those who shall commit any fraud with regard to literary or industrial property shall also incur the penalties prescribed in article 561.

ART. 564. A person who, by taking advantage of the inexperience or passions of a minor, should induce him to execute to his prejudice any obligation, discharge, or transfer of property rights, in consideration of a loan of money, a credit, or other personal property,

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whether the loan clearly appears or is clothed in another form, shall be punished with the penalties of *arresto mayor* and a fine of from 10 to 50 per cent of the amount of the obligation incurred by the minor.

ART. 565. He who shall defraud or prejudice another by employing any deceit not specified in the preceding articles of this section, shall be punished with a fine of an amount equal up to one double that of the loss occasioned, and in case of a repetition, with a fine of double the amount, and *arresto mayor* in its medium to its maximum degree.

CHAPTER VI.

PLOTS TO ALTER THE PRICES OF THINGS.

ART. 566. Those who shall request for a gift or promise in consideration of not taking part in a public auction, and those who shall attempt to keep away any bidders therefrom, by means of threats, gifts, promises, or any other artifice, for the purpose of altering the price to be obtained from the sale, shall be punished with a fine of from 10 to 50 per cent of the value of the things auctioned, unless they should have deserved a severer fine by reason of the threats or other means employed.

ART. 567. Those who wrongfully combine to enhance or lower the price of labor or regulate its conditions wrongfully, provided such combination has begun to be carried into effect, shall be punished with the penalty of *arresto mayor*.

This penalty shall be imposed in its maximum degree on the leaders and promoters of the combination, and on those who shall employ violence or threats to insure its success, unless they deserve a higher penalty by reason thereof.

ART. 568. Persons who, by spreading false rumors, or by using any other artifice, should succeed in altering the natural prices resulting from free competition in merchandise, stocks, public or private securities, or any other things which may be the subjects of trade, shall be punished with the penalties of *arresto mayor* and a fine of from 1,250 to 12,500 pesetas.

ART. 569. If the fraud mentioned in the foregoing article should relate to food stuffs or other objects of primary necessity, the penalty shall be imposed in its maximum degree.

For the imposition of this penalty it shall suffice that the combination should have commenced to be carried out.

CHAPTER VII.

PAWNBROKING ESTABLISHMENTS.

ART. 570. A person who, being engaged in the business of making loans upon pledges, salaries, or wages, shall not keep books of account and enter therein, without leaving blank spaces or interlining, the

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amounts loaned, their terms or interest, the names and residences of those who receive them, the nature, quality, and value of the articles pledged and the other circumstances required by the regulations, shall be punished with a fine of from 1,250 pesetas to 12,500 pesetas.

ART. 571. A pawnbroker who shall not give a receipt for the pledge or security received shall be punished with a fine of from double to five times its value.

CHAPTER VIII.

ARSON AND OTHER MALICIOUS DESTRUCTION OF PROPERTY.

ART. 572. The following shall be punished with the penalty of *cadena temporal* in its maximum degree to *cadena perpetua:*

1. Those who shall set fire to an arsenal, dockyard, warehouse, establishment for the manufacture of gunpowder or military fireworks, park of artillery, archives, or general museum of the State.

2. Those who shall set fire to a moving passenger train or a vessel away from port.

3. Those who shall set fire in a populous place to a storehouse containing inflammables or explosives.

4. Those who shall set fire to a theater, church, or other edifice devoted to meetings, if a number of people shall have gathered therein.

ART. 573. Those who shall set fire to any edifice, farmhouse, hut, shed, or vessel in port, with knowledge that one or more persons were within the same, shall be punished with the penalty of *cadena temporal* to *cadena perpetua.*

ART. 574. The penalty of *cadena temporal* shall be imposed:

1. Upon those who shall set fire to a public edifice, if the damage caused exceeds 6,250 pesetas.

2. Upon those who shall set fire to an inhabited house or any edifice whatsoever, in which several persons habitually meet, not knowing whether or not there were people therein, or a moving freight train if the damage caused in said cases should also exceed 6,250 pesetas.

ART. 575. The following shall be punished with the penalty of *presidio mayor:*

1. Those who shall commit any of the crimes included in the preceding article, if the amount of the injury caused should not exceed 6,250 pesetas.

2. Those who shall set fire to a house not destined for a dwelling or meeting place, but in a populous district, if the amount of the damage caused should exceed 6,250 pesetas.

3. Those who set fire to sugar mills, cane fields, or other similar plantations, if the damage caused should exceed 6,250 pesetas.

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ART. 576. If the damage caused in the cases of Nos. 2 and 3 of the foregoing article should not exceed 6,250 pesetas, but should be more than 650, there shall be imposed upon the culprit the penalty of *presidio correccional* in its medium and maximum degrees.

If it should not exceed 650 pesetas the penalty of *presidio correccional* in its minimum and medium degrees shall be imposed.

ART. 577. The following shall be punished with the penalty of *presidio correccional* in its maximum degree to *presidio mayor* in its medium degree if the damage caused shall exceed 6,250 pesetas:

1. Those who shall set fire to an edifice used as a dwelling in an uninhabited place.

2. Those who shall set fire to grain, pastures, woods, or plantings.

ART. 578. If the damage caused in any of the cases of the foregoing article should exceed 650, but not be more than 6,250 pesetas, the penalty shall be that of *presidio correccional* in its medium degree to *presidio mayor* in its minimum degree.

ART. 579. If it should not have amounted to 650 pesetas, the penalty next lower by one degree shall be imposed, provided fire should have been set to a building; and that lower by two degrees if it should have been set to grain, pasture lands, woods, or plantings.

ART. 580. When, by reason of having set fire to grain, pasture lands, woods, or plantings, there should have been danger of its spreading, on account of other properties being adjacent to those on fire, there shall be imposed a penalty higher by one degree than that prescribed for the crime.

ART. 581. Setting fire to things not included in the preceding articles shall be punished:

1. With the penalty of *arresto mayor* in its medium and maximum degrees, if the damage caused did not exceed 125 pesetas.

2. With the penalty of *arresto mayor* in its maximum degree to *presidio correccional* in its minimum degree, if the damage caused should exceed 125 but not be more than 1,250 pesetas.

3. With that of *presidio correccional* in its minimum and medium degrees, if the damage caused should exceed 1,250 and not exceed 6,250 pesetas.

4. And with that of *presidio correccional* in its medium and maximum degrees if it should exceed 6,250 pesetas.

ART. 582. In case of fire having been set to huts, ricks, or sheds that are unoccupied, or to any other object whose value does not exceed 625 pesetas, at a time or under circumstances that manifestly exclude any danger of its spreading, the culprit shall not incur the penalties prescribed in this chapter, but those he may deserve for the damage caused, in accordance with the provisions of the following chapter.

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ART. 583. The following shall, respectively, incur the penalties of this chapter: Those who shall cause destruction of property by the sinking or stranding of a vessel; by causing an inundation; the explosion of a mine or steam engine; by removing rails from a railroad; by changing maliciously the signals employed in the service of the latter for the safety of moving trains; by the destruction of telegraph wires and poles; and, in general, by the employment of any other agency or medium of destruction as powerful as those mentioned.

ART. 584. A person guilty of the burning or damage of another's property shall not be exempted from the penalties imposed in this chapter even though in order to commit the crime he may have burned or damaged property of his own.

ART. 585. If the things set on fire belonged exclusively to the incendiary, there shall be imposed upon him the penalty of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree, if the fire should either have been caused with intent to defraud the rights of a third person or to cause him any prejudice; or if, even without this intention, such prejudice had been caused him, or if the thing set on fire should have been a building in a populous spot.

CHAPTER IX.

DAMAGE TO PROPERTY.

ART. 586. Those who cause any damage to property of another not specified in the preceding chapter, are guilty of injuries to property and subject to the penalties of this chapter.

ART. 587. Those shall be punished with the penalty of *prisión correccional* in its minimum and medium degrees who shall cause damage to property exceeding in amount 6,250 pesetas:

1. With the intention of hindering the free action of the authorities or in revenge for their decisions, whether the crimes were committed against public employees or against individuals who had assisted or could assist, as witnesses or in any other manner, in the enforcement or application of the laws.
2. By introducing in any manner whatsoever infection or contagion among cattle.
3. By employing poisonous or corrosive substances.
4. By a gang or in a deserted spot.
5. Within an office for the keeping of archives or registry.
6. Upon bridges, roads, promenades, or other places of common public use.
7. By ruining of the person injured.

ART. 588. He who, under any of the circumstances mentioned in

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the foregoing article, shall cause damage exceeding 125 pesetas but not more than 6,250 pesetas, shall be punished with the penalty of *arresto mayor*.

ART. 589. The burning or destruction of papers or documents, the value of which can be estimated, shall be punished according to the provisions of this chapter. If the value can not be estimated, with the penalties of *arresto mayor* in its maximum degree to *prisión correccional* in its medium degree and a fine of from 625 to 6,250 pesetas.

The provisions of this article are to be considered as applicable if the deed should not constitute another graver crime.

ART. 590. The damage to property not included in the preceding articles, amounting to more than 125 pesetas, shall be punished with a fine of an amount equal up to three times that of the damage, never being less than 200 pesetas.

This determination is not applicable to damages caused by cattle and others, which must be classed as misdemeanors according to the provisions of Book III.

The provisions of this chapter shall only be applicable when a higher penalty is not proper for the crime according to the provisions of article 535.

CHAPTER X.

GENERAL PROVISIONS.

ART. 591. The following are exempt from criminal liability and subject only to civil liability for the thefts, frauds, or damages that they may reciprocally cause each other:

1. Spouses, ascendants, and descendants, or relations by affinity in the same line.
2. The widowed spouse, with regard to the things belonging to the deceased spouse while they have not passed into the possession of another.
3. Brothers and brothers-in-law, if they live together.

The exceptions of this article are not applicable to any strangers who shall share in the offense.

TITLE XI.

RECKLESS NEGLIGENCE.

ART. 592. He who shall execute through reckless negligence an act that, if done with malice, would constitute a grave crime, shall be punished with the penalty of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree, and with *arresto mayor* in its minimum and medium degrees if it shall constitute a less grave crime.

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He who, in violation of the regulations, shall commit a crime through simple imprudence or negligence, shall incur the penalty of *arresto mayor* in its medium and maximum degrees.

In the application of these penalties the courts shall proceed according to their discretion, without being subject to the rules prescribed in article 80.

The provisions of this article shall not be applicable if the penalty prescribed for the crime is equal to or less than those contained in the first paragraph thereof, in which case the courts shall apply the next one thereto in the degree which they may consider proper.

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BOOK III.

MISDEMEANORS AND THEIR PENALTIES.

TITLE I.

MISDEMEANORS AGAINST PUBLIC ORDER.

ART. 593. Whosoever shall throw stones at or soil statues or paintings, or cause any damage whatsoever to the streets, parks, gardens, or promenades or appliances for public lighting, or to objects of adornment or of public utility or amusement, even though belonging to individuals, shall be punished with a fine of from double to four times the amount of the damage caused, if the act itself should not, on account of its gravity, be included in Book II of this code.

The same penalty shall be incurred by those who in any manner whatsoever shall violate rules concerning the embellishment of cities.

ART. 594. The following shall be punished with the penalty of arrest of from one to ten days and a fine of from 15 to 125 pesetas:

1. Those who shall disturb acts of worship, or offend the religious sentiments of those attending the same, in any manner not foreseen in Section III, Chapter II of Book II of this code.

2. Those who by exhibiting prints or engravings or by means of other acts shall offend against good morals and customs without committing a crime.

ART. 595. Those who, within towns or in a public or frequented place, shall discharge firearms, rockets, petards, or other projectiles that may cause alarm or peril, shall be punished with the penalty of arrest of from one to five days and a fine of from 15 to 125 pesetas.

ART. 596. The following shall be punished with penalties of from one to fifteen days and a fine of from 70 to 200 pesetas:

1. Those who shall lightly disturb order at the sessions of a superior or inferior court, on the occasion of public acts, spectacles, solemnities, or at largely attended meetings.

2. The subordinates of the civil branch of the administration who shall not observe the proper respect and submission due their superiors, when a higher penalty should not be prescribed in this code or in other laws.

ART. 597. The following shall be punished with a fine of from 15 to 125 pesetas and censure:

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1. Those who shall institute or take an active part in "callithumpian concerts" or other tumultuous meetings, thereby offending any person or disturbing public tranquillity.

2. Those who in rounds, or other nocturnal revelries shall, without committing a crime, disturb public order.

3. Those who shall cause disturbance or scandal through their drunkenness.

4. Those who, without being included in other provisions of this code, shall lightly disturb public order by using means that naturally would produce alarm or disturbance.

5. Those who shall lack in the respect and consideration due to the authorities, or shall disobey them lightly, by failing to comply with the special orders that they may give them, provided such want of respect or disobedience should not constitute a crime.

6. Those who shall offend the agents of the authorities in the exercise of their functions in a manner not constituting a crime, and likewise those who shall disobey them on similar occasions.

7. Those who shall not give the authorities such aid as they may call for in cases of crime, fire, shipwreck, inundation, or other calamity, should they have been able to do so without damage or personal risk.

ART. 598. Those who shall conceal their true names, residence, status, or place of domicile, either from the authorities or from any public official who should ask it by virtue of his office, shall be punished with a fine of from 70 to 200 pesetas.

ART. 599. The following shall be punished with a fine of from 15 to 125 pesetas:

1. Those who shall practice a profession that requires a diploma, without possessing one.

2. Those who, in violation of the orders of the authorities, shall appear in public wearing masks at a time when it is not permitted to do so.

3. Those who carry arms without permission to do so.

TITLE II.

MISDEMEANORS AGAINST PUBLIC INTEREST AND THE GOVERNMENT OF TOWNS.

ART. 600. The following shall be punished with penalties of from one to ten days of arrest or a fine of from 15 to 125 pesetas:

1. Those who shall refuse to receive lawful money in payment.

2. Those who, having received in good faith counterfeit money, shall spend it in a sum less than 325 pesetas and more than 70 after knowing of its falsity.

3. The traders or vendors who shall keep measures or weights artfully contrived to defraud, or who in any manner whatsoever shall

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violate the rules established for the making of standard weights and measures in the guild to which they belong.

4. Those who shall defraud the public in the sale of goods, whether in quantity or quality, by any means whatsoever not expressly penalized.

5. Traders or vendors in whose possession any food stuffs shall be seized lacking in the proper weight, measure, or quality.

ART. 601. The following shall be punished with penalties of from five to fifteen days of arrest and a fine of from 70 to 200 pesetas:

1. Those who shall spread false rumors or use any other unlawful artifice in order to alter the natural price of things, if the act should not constitute a crime.

2. Those who shall violate the police rules tending to insure the supplying of towns.

ART. 602.[1] Those who in public places or establishments shall start or take part in any kind of games not for pure pastime and recreation shall incur a fine of from 15 to 70 pesetas.

ART. 603.[2] The following shall be punished with a penalty of from five to fifteen days of arrest and a fine of from 70 to 200 pesetas in cases not included in Book II:

1. Pharmacists who shall dispense medicines of bad quality.

2. The owners or persons in charge of eating houses, confectionery stores, bakeries, or other similar establishments who shall sell or serve adulterated or altered drinks or articles of food injurious to health, or who shall not observe in the use and care of vessels, measures, and utensils the established rules or ordinary precautions, when the act does not constitute a crime.

ART. 604. The following shall be punished with a fine of from 15 to 70 pesetas and censure:

1. Those who shall bathe without regard to the rules respecting decency or safety established by the authorities.

2. Those who shall violate the sanitary police regulations regarding prostitution.

3. Those who shall violate the rules issued by the authorities at times of epidemics or contagious diseases.

4. Those who shall violate the regulations, ordinances, and proclamations relating to epidemics among animals, the extinction of locusts, or any other similar plague.

5. Those who shall violate the sanitary rules established by the authorities regarding the carrying of corpses and their interment in cases not provided for in Book II.

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[1] See Order No. 118, Headquarters Division of Cuba, July 24, 1899, page 136, and No. 230, December 4, 1899, page 137.

[2] See General Orders, Nos. 151, Headquarters of Porto Rico, September 27, 1899, page 146, and 87, April 25, 1900, page 148.

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6. Those who shall desecrate corpses, cemeteries, or places of burial by actions or deeds not constituting a crime.

7. Those who shall throw dead animals, garbage, or refuse in the streets and public places where it is forbidden to do so, or who shall pollute fountains or watering places.

8. Those who shall violate the police rules or proclamations relating to the manufacture of fetid and unhealthy substances or who shall throw them in the streets.

9. Those who in any other manner not constituting a crime shall violate the regulations, ordinances, or proclamations relating to public sanitation issued by the authorities within the scope of their powers.

ART. 605. The following shall be punished with penalties of from one to five days of arrest or a fine of from 15 to 125 pesetas:

1. Those who shall give public exhibitions or hold any kind of meetings whatsoever without obtaining the proper license, or who should overstep the bounds of the permission granted them.

2. Those who shall open establishments of any kind without the license of the authorities, whenever it should be necessary.

ART. 606. The following shall be punished with penalties of from one to ten days of arrest and a fine of from 70 to 200 pesetas:

1. Those who shall extinguish the public lights, or lights on the outside of buildings, or those over their doors or stairways.

2. Those who shall fail to observe the rules established for public lighting at places where this service is to be furnished by individuals.

ART. 607. The following shall be punished with the penalty of a fine of from 15 to 125 pesetas, or censure:

1. Physicians who, noticing in a person whom they are attending, or in a corpse, indications of poisoning or of some other crime, shall not immediately notify the authorities, provided that in view of the circumstances they should not have incurred a greater liability.

2. Those charged with the custody or safe-keeping of a lunatic who shall allow him to wander through the streets and public places without proper surveillance.

3. The owners of fierce and dangerous animals who shall let them loose, or in the way of doing harm.

4. Those who shall violate the regulations, ordinances, or proclamations relating to public conveyances.

5. Those who shall ride or drive saddle animals or carriages through the streets, promenades, and other public places, endangering passers-by, or in violation of the ordinances and proclamations relating to good order.

6. Those who shall obstruct the sidewalks, streets, and public places by their acts or with wares of any kind.

7. Those who shall throw into the street or a public place water, stones, or other objects which might cause damage to persons or things,

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provided that a greater penalty should not be prescribed for the deed on account of its seriousness or character.

8. Those who keep in places on the outside of their dwellings overhanging the streets or public way, objects that threaten to cause damage to passers-by.

ART. 608. The following shall be punished with a fine of from 15 to 125 pesetas:

1. The owners of eating houses, inns, and other establishments for the reception of guests who shall fail to give to the authorities the reports and information prescribed by the regulations, ordinances, or proclamations at the time and in the manner prescribed therein.

2. The domestic servants, grooms, and employees who shall fail to comply with the provisions established by the authorities for public assurance and security.

ART. 609. The following shall be punished with a penalty of from 70 to 200 pesetas:

1. Those who shall violate the rules established for avoiding the spread of fire from steam engines, boilers, ovens, stoves, chimneys, or other similar places, or who shall place or construct said objects in violation of the regulations, ordinances, or proclamations, or who shall fail to clean or take care of them, thereby causing damage of fire.

2. Those who in violation of the orders of the authorities shall neglect to repair buildings about to collapse or having a bad appearance.

3. Those who shall violate the rules of safety concerning the deposit of any materials, the digging of wells or excavations.

4. Those who shall violate the regulations, ordinances, or proclamations of the authorities relating to the manufacture and safe-keeping of inflammable or corrosive materials or chemical products liable to cause damage.

TITLE III.

MISDEMEANORS AGAINST THE PERSON.

ART. 610. Those who shall cause physical injuries that prevent the injured person from working for from one to seven days, or make medical attendance necessary for a similar period, shall be punished with the penalty of *arresto mayor*.

If the offender should be a son, pupil, or slave of the person injured, the maximum degree of the penalty shall be imposed, whatever be the other attendant circumstances.

ART. 611. The following shall be punished with a penalty of from five to fifteen days of arrest and censure:

1. Those who shall cause physical injuries that do not prevent the person injured from devoting himself to his customary labors, nor require medical attendance.

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2. Husbands who shall maltreat their wives, even though they do not cause them injuries of the character mentioned in the foregoing paragraph.

3. Wives that are disobedient to their husbands, who shall maltreat them bodily, or by speech.

4. Spouses who shall cause a scandal by their domestic dissensions after having been warned by the authorities, if the deed should not be included in Book II of this code.

5. Fathers of families who shall forsake their children by not giving them the education corresponding to their condition in life, and such as their means will permit.

6. Guardians, tutors, or persons in charge of a minor under 15 years of age who shall disobey the provisions regarding obligatory primary instruction, or who shall abandon the care of his person.

7. Sons of a family who should be lacking in the respect and submission due their parents.

8. Wards who should commit the same fault with regard to their guardians.

9. Those who finding an abandoned child under 7 years of age in danger of its life do not turn it over to the authorities or to its family.

10. Those who in the relinquishment of infants shall break the rules or customs established in their respective locality and those who shall fail to take to a foundling asylum or safe place any infant that they shall find abandoned.

11. Those who shall not succor or help a person whom they may meet in an uninhabited place, wounded or in danger of perishing, if they could do so without their own detriment, unless such omission should constitute a crime.

12. Those with regard to whom, in the case of the brawl defined in article 418 of this code, it shall appear that they had used violence of any kind against the person of the one injured, provided that but slight injuries were inflicted upon the latter, and that the author were unknown.

Art. 612. The following shall be punished with penalties of from one to five days of arrest, or a fine of from 15 to 125 pesetas:

1. Those who shall beat or bodily illtreat another, or abuse him by speech without causing him any physical injury.

2. Those who, without being included in other provisions of this code, shall threaten another with weapons, or draw him into a quarrel, unless in self-defense.

3. Those who shall threaten another by words and in the heat of anger with an injury that would constitute a crime, and who by their subsequent actions show that they persisted in the intention which they gave utterance to in their threat, provided that, in view of the

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circumstances of the deed, it shall not be included in Book II of this code.

4. Those who by word of mouth threaten to cause another an injury that would not constitute a crime.

5. Those who shall cause another any unjust duress or vexation not punished in Book II of this code.

ART. 613. The following shall be punished with a fine of from 15 to 125 pesetas and censure:

1. The director of a newspaper in which false statements shall have been made, should he refuse to insert gratis within the term of three days the answer addressed to him by the offended person or by his authorized representative, correcting or explaining the same, provided that said rectification, however, does not exceed in length double that of the false item or article.

In case of the absence or death of the person offended, his children, parents, brothers, and heirs shall have the same right.

2. Those who, by means of printing, lithography, or any other means of publication, shall maliciously divulge facts relating to a person's private life, that without constituting outrages should nevertheless cause prejudice or serious trouble in the family to whom the report refers.

3. Those who shall lightly offend another by act or word, if the offended person should complain; his pardon shall extinguish the penalty.

4. Those who, being called upon by another, in order to avoid a greater evil, should fail to give the assistance requested, provided that no prejudice would have resulted to them.

5. Those who, through mere imprudence or negligence, without committing a violation of the regulations, shall cause an injury which, if done with malice, would constitute a crime or misdemeanor.

TITLE IV.

MISDEMEANORS AGAINST PROPERTY.

ART. 614. Those who for gain or lucre shall interpret dreams, make prognostications or divinations, or take advantage of the public credulity in any other similar manner, shall be punished with the penalty of *arresto menor*, if the act should not be punished in Book II of this code.

ART. 615. The following shall be punished with a penalty of from one to fifteen days of *arresto menor:*

1. Those who shall trespass upon another's estate or fields to gather fruits and eat them on the spot.

2. Those who, in the same manner, shall take fruits, grains, or other products to give them on the spot to horses or cattle.

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3. Those who, without the owner's permission, should trespass upon estates or fields before the crops have been completely removed, for the purpose of utilizing the gleanings or any other remnants of the crop.

4. Those who shall trespass upon the inclosed or fenced estate of another, if trespassing thereon were forbidden by a notice.

ART. 616. The following shall be punished with a fine of from 15 to 125 pesetas:

1. Those who shall enter another's inclosed estate to hunt or fish, or fields where trespassing is forbidden, without the owner's permission.

2. Those who under any pretext or for any reason whatsoever shall cross nurseries or sown ground, with whatever intent or pretext.

3. Those who in hunting or fishing on public grounds or of common use shall employ any of the means prohibited by any of the ordinances.

ART. 617. A fine of 10 pesetas shall be imposed for the simple act of trespassing upon another's walled and fenced grounds without the owner's permission.

ART. 618. The following shall be punished with a fine of from 70 to 200 pesetas:

1. Those who, while in charge of carriages, horses, or harmful animals should commit any of the excesses foreseen in the two foregoing articles, unless by reason of the damage caused they should deserve a higher penalty.

2. Those who shall destroy or tear to pieces any hut, shed, hedges, fences, palings, or other protections to property.

3. Those who shall cause damage by throwing upon property stones, articles, or projectiles of any kind from without the same.

ART. 619.[1] The owner of cattle trespassing upon another's estate and causing damage exceeding 15 pesetas shall be punished with a fine for each head of cattle:

1. Of from 2 to 5 pesetas for horned cattle.

2. Of from 1 to 3 pesetas for horses, mules, or asses.

3. Of from 50 céntimos to 2 pesetas for goats, if the estate were planted with trees.

4. Of from an amount equal to that of the damage caused to one-third more, for sheep or any other kind of animals not included in the foregoing numbers. The same shall be observed if the animals were goats and there were no trees on the grounds.

ART. 620. The owners of the cattle mentioned in numbers 1, 2, and 3 of the foregoing article, which should pass upon another's estate without the owner's permission, without causing damage, or damage

[1] See Gen. Order No. 128, Headquarters Department of Porto Rico, August 24, 1899, page 144.

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less than 5 pesetas, shall incur a fine of 10 centimos de pesetas for each head of cattle.

If the estate were inclosed, or should contain vineyards, olive groves, sown land, or other plantings, or if there should be a relapsing on the part of the offender, the fine prescribed in the preceding article shall be imposed according to the cases therein prescribed.

ART. 621. If the cattle should be purposely let in, or stray in through the abandonment or negligence of their owners or herdsmen, besides paying the fines mentioned in the preceding articles, the owners and herders in their respective cases shall undergo from 1 to 30 days of arrest, if a greater penalty should not attach to them as guilty of theft or willful or negligent damage.

If they should relapse into this offense for the third time within a space of thirty days, they shall be tried and punished as guilty of theft or damage, according to Book II.

ART. 622. Those who should cause a fire of any character not penalized in Book II of this Code shall be punished with the penalty of *arresto menor*, or a fine of from 15 to 325 pesetas.

ART. 623. The following shall be punished with a fine of from 15 to 70 pesetas:

1. Those who shall violate the regulations or proclamations relating to good order with regard to the burning of stubble or other vegetation.

2. Those who shall violate the ordinances concerning hunting and fishing.

ART. 624. Those who shall cause any damage in any of the manners specified in this Code, whose amount does not exceed 125 pesetas, shall be punished with the penalty of arrest of from 1 to 5 days, or a fine of from 15 to 70 pesetas.

ART. 625. Those who shall cut trees on another's estate, causing damage not exceeding 125 pesetas, shall be punished with a fine of from double to four times the amount of the damage caused; and if said damage should not consist in cutting down trees, but in cutting branches of firewood, the fine shall be from an amount equal to double that of the damage caused.

ART. 626. Those who in making use of waters belonging to others, or in diverting them from their course shall cause damage, the amount of which does not exceed 125 pesetas, shall incur a fine of from double to four times the amount of the damage caused.

ART. 627. Those who intentionally or through negligence or carelessness shall cause any damage whatsoever not punished in this or in the preceding book, shall be punished with a fine of from one-half the amount of damage caused to an equal amount, if it were possible to estimate it, and otherwise with a fine of from 15 to 200 pesetas.

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TITLE V.

PROVISIONS COMMON TO ALL MISDEMEANORS.

ART. 628. In applying the penalties of this book the courts shall proceed, according to their judgment, within the limits of each of them, in view of the circumstances of each case.

ART. 629. Accomplices in misdemeanors shall be punished with the same penalty as the principals, but in its minimum degree.

ART. 630. The following shall always be confiscated:

1. The arms that the offender may have carried in causing any damage or inflicting any injury, provided he displayed them.
2. The imitated, adulterated, or changed beverages or foodstuffs, provided they be noxious to health.
3. The counterfeit money, or falsified, adulterated, or damaged effects, given out as lawful or good.
4. The foodstuffs with regard to which the public is defrauded either in quantity or quality.
5. The false measures or weights.
6. The outfits employed in unauthorized games of chance or raffles.
7. The articles used in divinations or other similar frauds.

ART. 631. The courts shall order the confiscation of the instruments and articles relating to the misdemeanors mentioned in the foregoing article, according to their discretion, in view of the cases and circumstances.

ART. 632. When insolvent persons are punished with fines, they shall be punished with one day's arrest for every 15 pesetas for which they are liable.

If such liability should not amount to 15 pesetas, they shall, nevertheless, be punished with arrest for one day.

They shall also be punished with one day of arrest for ever 15 pesetas as to the other pecuniary liabilities in favor of a third party.

ART. 633. The provisions of this book neither exclude nor limit the powers that by virtue of the municipal laws or any other special laws belong to the officials of the administration in issuing proclamations relating to police and good order, and in the administrative correction of misdemeanors in cases in which their repression may have been confided to them by the said laws and decrees.

FINAL PROVISION.

ART. 634. All the general penal laws existing prior to the promulgation of this Code are hereby repealed, excepting those relating to crimes not subject to its provisions, in accordance with the prescriptions of article 7 and the royal decree of September 29, 1866, ordering the observance of the project of law for the repression and punishment of the slave trade.

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We hereby certify that the foregoing translation of the Penal Code in force in Cuba and Porto Rico, is correct.

(Signed) FRANK L. JOANNINI,
Official Translator,
Division of Customs and Insular Affairs, War Department.
(Signed) M. E. BEALL, *Assistant.*

I hereby certify that Frank L. Joannini is the official translator of the Division of Customs and Insular Affairs of the War Department.

(Signed) CLARENCE R. EDWARDS,
Lt. Col. 47th Infy., U. S. V., Chief of Division.

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APPENDIX.

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MODIFICATIONS OF AND ADDITIONS TO THE PENAL CODE, MADE BY THE MILITARY GOVERNMENT OF CUBA.

No. 67.

HEADQUARTERS DIVISION OF CUBA,
Habana, June 1, 1899.

The military governor of Cuba directs the publication of the following order:

I. So much of the decree of July 20, 1882, as extends the provisions of Article XIV of the Penal Code of Spain to the island of Cuba is hereby revoked.

II. The provisions of Article XII of the Penal Code of Cuba shall apply to all crimes and misdemeanors which may be committed by means of printing, engraving, or other mechanical means of publication.

III. The directors and editors of all periodicals, as well as the printers thereof, whether occupying these positions permanently or temporarily, shall be civily and criminally responsible, under the preceding article, for everything published in such periodicals, while they are acting in the said capacities, and whether or not said writings, drawings, articles, or paragraphs be signed, provided the same be not published in the performance of official duty. The responsibility of the author is in no wise diminished by the terms of this order.

The term printer, as used herein, will be construed to mean the head of any establishment wherein the printing, writing, engraving, or publication has been done.

ADNA R. CHAFFEE,
Brigadier-General, Chief of Staff.

No. 112.

HEADQUARTERS DIVISION OF CUBA,
Habana, July 20, 1899.

The military governor of Cuba directs the publication of the following order:

I. Article 398 of the Penal Code is hereby amended to read as follows:

Any person who bribes a public officer with gifts, presents, offerings, or promises shall receive the same punishment as the officer bribed, except the deprivation of office.

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Any person from whom an officer may have received such gift, present, offering, or promise shall be exempt from all punishment, provided he give information of the fact to the proper authorities, with the evidence necessary to prove the same.

II. Article 400 of the Penal Code is hereby amended to read as follows:

Whenever any of the crimes included in this chapter shall have been committed by reason of a demand made by a public officer, the latter shall suffer the penalties provided for in the preceding articles in their maximum degree, and the party who may have acceded to such demand shall suffer the said penalties in their minimum degree.

The simple demand on the part of a public officer, though not followed by actual bribery, shall render such officer liable to punishment under the provisions of the preceding articles.

The provisions of the second paragraph of article 398 shall apply to this article.

In every case included in this chapter the gifts or presents shall be confiscated to the State.

ADNA R. CHAFFEE,
Brigadier-General, Chief of Staff.

No. 118.

HEADQUARTERS DIVISION OF CUBA,
Habana, July 24, 1899.

The military governor of Cuba directs the publication of the following order:

I. Article 602 of the Penal Code is hereby modified to read as follows:

All persons who, in public places or establishments, promote or take part in any game of chance, except purely for recreation or pastime, shall be subject to a fine of from three to fourteen dollars.

All persons who take part in any lottery or unauthorized raffle, or who possess slips or tickets of the same, shall be subject to the same penalty unless the act be included in the greater offense provided for in article 355 of the Penal Code; as well also as those who cause the insertion in the papers or the publication of announcements or notices concerning such lotteries or raffles, and the directors, editors, and printers of the papers publishing the same.

II. Hereafter no application for the establishment or authorization of any lottery will be granted by any municipal, provincial, or other public officer of the island of Cuba.

ADNA R. CHAFFEE,
Brigadier-General, Chief of Staff.

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No. 125.

HEADQUARTERS DIVISION OF CUBA,
Habana, July 31, 1899.

The military governor directs the publication of the following order:

Paragraphs 2 and 3 of article 486 of the Penal Code in force in Cuba is hereby modified to read as follows:

No person shall be punished for calumny or libel, except upon complaint of the party or parties offended, whenever the offense is against private individuals, or upon denunciation of the same, whenever it is directed against public authorities or constituted official bodies and corporations of the State, or is included in the offenses defined in Chapter V of Title III of this book. In every case the granting of pardon by the party offended shall stay all criminal action against the offender or remove the penalty, if this may have been already imposed.

ADNA R. CHAFFEE,
Brigadier-General, Chief of Staff.

No. 230.

HEADQUARTERS DIVISION OF CUBA.
Habana, December 4, 1899.

The military governor of Cuba directs the publication of the following order prohibiting the introduction of lottery tickets into the island of Cuba through the medium of the postal service or any other agency whatever:

No person shall bring or cause to be brought into the island of Cuba from abroad, through the mails or through the custom-house, or any other agency whatever, as merchandise, or as part of baggage, or upon the persons of travelers, for the purpose of disposing of the same, any papers, certificates, or other instruments purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, so-called gift concert, or other enterprise offering prizes dependent upon lot or chance, or any advertisement of such lottery, so-called gift concert, or enterprise, under the penalty of confiscation of said papers, certificates, tickets, or other instruments, including advertisements, and punishment for the first offense by a fine of not more than one thousand dollars ($1,000), or by imprisonment for not more than two years, or by both fine and imprisonment; and for the second and subsequent offenses by imprisonment for not more than five years.

ADNA R. CHAFFEE,
Brigadier-General, Chief of Staff.

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No. 26.

HEADQUARTERS DIVISION OF CUBA,
Habana, January 18, 1900.

The military governor of Cuba, upon the recommendation of the secretary of justice, directs the publication of the following order:

I. Hereafter whatever time prisoners, who may be condemned to any of the correctional or light punishments specified in article 24 of the Penal Code, may have been held in provisional imprisonment shall be counted as a part of their term of service and deducted therefrom.

II. A like deduction, but limited to one-half the period of provisional imprisonment, shall be made in favor of prisoners sentenced to any of the punishments known as "exemplary punishment" (*pena aflictiva*) in article 24 of the Penal Code.

ADNA R. CHAFFEE,
Brigadier-General, Chief of Staff.

No. 116.

HEADQUARTERS DIVISION OF CUBA,
Habana, March 17, 1900.

The military governor of Cuba, upon the recommendation of the secretary of justice, directs the publication of the following order:

I. The following shall be guilty of perjury:

(1) All those who willfully state as truth a matter or fact which they know to be false, after having taken an oath (or other affirmative form authorized by law as its equivalent) that they will truly testify, declare, depose, or certify before any competent court, judge, official, or proper person, in any proceedings, civil or criminal, or other case in which said oath (or other affirmative form) shall be administered by law;

(2) All those who, by inducement, persuasion, or force, succeed in making another guilty of perjury, as in the foregoing paragraph.

II. The commission of the crime of perjury shall not be excused on the ground of irregularity in administering the oath (or other affirmative form).

III. Perjury is punishable by imprisonment for a period not less than one nor more than twelve years, except those cases wherein the victim of perjury should have suffered capital punishment, or have begun to serve a term of more than twelve years' confinement; in the former case the imprisonment shall be thirty years at hard labor, and in the latter for a period not less than twelve years and one day, nor more than twenty years.

IV. In all cases when, as a consequence of perjury, an accused per-

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son has been condemned to be deprived of his liberty, the punishment imposed on the perjurer shall be equal to the one imposed on the accused.

V. The judge or court, at the time of passing sentence on a perjurer, will take into consideration whether the victim of perjury who may have been condemned shall have or not begun to serve the term imposed.

VI. The provisions of the Penal Code in force regarding false testimony are amended in conformity with this order.

ADNA R. CHAFFEE,
Brigadier-General, U. S. Volunteers, Chief of Staff.

No. 150.

HEADQUARTERS DIVISION OF CUBA,
Habana, April 10, 1900.

The military governor of Cuba, upon the recommendation of the secretary of justice, directs the publication of the following order:

I. Paragraphs 1 and 3 of article 342 of the Penal Code are hereby revoked.

II. Paragraph 4 of article 467 of the Penal Code is amended to read as follows:

"In all cases provided for in this article the implied pardon alone shall discontinue the criminal action or remove the penalty, should this have been already imposed upon the culprit."

ADNA R. CHAFFEE,
Brigadier-General, U. S. Volunteers, Chief of Staff.

No. 165.

HEADQUARTERS DIVISION OF CUBA,
Habana, April 19, 1900.

The military governor of Cuba, upon the recommendation of the secretary of state and government, directs the publication of the following order:

I. On and after the 1st day of June, 1900, cockfighting is hereby prohibited within the limits of the island of Cuba.

II. A fine of five hundred dollars will be imposed upon each and every transgressor of this law.

III. All laws or orders or parts thereof in conflict with this order are hereby revoked.

ADNA R. CHAFFEE,
Brigadier-General, U. S. Volunteers, Chief of Staff.

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No. 217.

HEADQUARTERS DIVISION OF CUBA,
Habana, May 28, 1900.

The military governor of Cuba, upon the recommendation of the secretary of justice, directs the publication of the following order:

I. Anyone who maltreats any animal, either by subjecting it to excessive work, or by treating it in an improper manner, shall be punished by imprisonment for a period not exceeding five days or by a fine of not more than twenty-five dollars. The amount of weight that may be transported in vehicles or by each animal shall be fixed by each municipality.

II. Anyone who cruelly beats, tortures, injures, maims, or kills any animal, whether wild or tame, and whether belonging to himself or to another, shall be punished with imprisonment for a period of not less than five days nor more than fifteen, or by a fine of not less than five dollars nor more than fifty. The same penalty shall be imposed upon any person who permits or procures in any way the commission of the acts above mentioned.

III. The penalty provided for in Article II shall also be imposed upon any person who, being the owner, possessor, or having charge or custody of a maimed, diseased, disabled, or infirm animal, abandons it, or leaves it to die in a street, road, or public place, or who allows it to remain more than three hours in a street, road, or public place after he receives notice that said animal is left there disabled.

Any agent or officer of the municipal or rural police, or of any incorporated society for the prevention of cruelty to animals, may lawfully destroy, or cause to be destroyed, any animal found abandoned and not properly cared for, which appears, in the judgment of two reputable citizens called by him to view the same in his presence, to be glandered or diseased past recovery for any useful purpose. Whenever the nature of the disease is such as to involve danger, the agent or officer may destroy the animal without consulting the above-mentioned citizens.

IV. In transporting animals or cattle, railroad companies are charged not to overload the cars, nor continue their confinement in cars for a longer period than twenty-four consecutive hours without unloading the same for rest, water, and feeding, nor shall such animals be kept without water and feeding for over ten consecutive hours. A railway company or an owner, agent, consignee or person in charge of the animals or cattle who commits any of the above acts or allows them to be committed shall be subject to a penalty of not less than twenty-five dollars nor more than two hundred and fifty. Said penalty shall be not applicable whenever the unloading of the animals or cattle for rest, water, or feeding may have been unavoidably prevented; nor

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shall the foregoing provision in regard to the unloading of the animals be applied whenever they are carried in cars in which they can and do have proper food, water, and space for rest.

In estimating such confinement, the time during which the animals have been confined on the connecting roads from which the animals have been received, must be computed. If the owner, agent, consignee or other person in charge of such animals refuses or neglects upon demand to pay for the care or feed of any animals while unloaded or rested, as hereinbefore specified, the railway company or other carriers thereof may charge the expenses thereof to the owner or consignee and shall have the right to retain said animals as a lien until the aforesaid expenses are paid.

V. A person who in any way is a witness of or aids or cooperates in the furtherance of any fight between cocks or other birds, bull-fights, or fights between other animals, which may be premeditated by anyone owning or having custody of said birds or animals, shall be punished by a fine not less than ten dollars nor more than five hundred dollars or by imprisonment for a period of not less than one month nor more than six.

VI. Any person violating the laws with regard to cruelty to animals may be arrested and handed over to the proper authorities for trial and punishment.

Whenever any person arrested is, at the time of said arrest, in charge of any animal or of any vehicle drawn by or containing any animal, the police officer or officers making the arrest may take charge of such animal and of such vehicle and its contents and deposit same in some safe place of custody, and all necessary expenses incurred in the care of such property shall be charged to the owner of same.

VII. It shall be the duty of all mayors, assistant mayors, municipal police and rural guards to see to the strict enforcement of the provisions of this order, and failure to do so on their part shall subject them to the same penalty as the offender of the provisions of the order; provided, however, that said penalty shall not extend to imprisonment.

VIII. The officers or agents of any duly incorporated society for the prevention of cruelty to animals shall have power to make arrests of any persons violating the provisions of this order, immediately turning them over to the possession of the police or rural guard for the corresponding punishment. But such officers or agents must for purposes of identification wear the authorized badge of that society, or exhibit evidence of their authority to act as officer or agent thereof.

IX. A second or further violation of any of the provisions of this order will be always punished with imprisonment, except where fine alone is provided for, in which case the maximum fine shall be imposed.

J. B. Hickey,
Assistant Adjutant-General.

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No. 239.

HEADQUARTERS DIVISION OF CUBA,
Habana, June 12, 1900.

The military governor of Cuba, upon the recommendation of the secretary of justice, directs the publication of the following order:

Paragraphs 2 and 3 of article 486 of the existing Penal Code, modified by Order No. 125, Headquarters Division of Cuba, July 31, 1899, are hereby further modified to read as follows, and shall have retroactive effect:

ARTICLE 486. No person shall be punished for calumny or libel, except upon complaint of the party or parties offended, whenever the offense is against private individuals, or upon denunciation of the same, whenever it is directed against public authorities or constituted official bodies and corporations of the State, or is included in the offenses defined in Chapter V of Title III of this book. In the first case the granting of pardon by the party offended shall stay all criminal action against the offender or remove the penalty, if this may have been already imposed. In all other cases hereinbefore referred to, after the denunciation has been once made the crime shall be considered public; consequently the Government alone can pardon the offenders condemned for this kind of crime, or declare penal action in such matters ended.

J. B. HICKEY,
Assistant Adjutant-General.

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MODIFICATIONS OF AND ADDITIONS TO THE PENAL CODE MADE BY THE MILITARY GOVERNMENT OF PORTO RICO.

GENERAL ORDERS, No. 109. } HDQRS. DEPARTMENT OF PORTO RICO, *San Juan, July 31, 1899.*

The United States provisional court, instituted by General Orders, No. 88, current series, these headquarters, having been vested with jurisdiction over cases arising in Porto Rico under United States Statutes, the following section of these Statutes will apply to this military department (in addition to the existing local law, articles 150 and 249, Penal Code), and are published for the information and guidance of all concerned:

* * * * * * *

SEC. 5336. If two or more persons (in any State or Territory) conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to take, seize, or possess any property of the United States contrary to the authority thereof, each of them shall be punished by a fine of not less than five hundred dollars and not more than five thousand dollars, or by imprisonment, with or without hard labor, for a period not less than six months nor more than six years, or by both such fine and imprisonment.

* * * * * * *

SEC. 5283. Every person who, within the limits of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out, or arming of any vessel with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, or issues or delivers a commission within the territory or jurisdiction of the United States for any vessel to the intent that she may be so employed, shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars and imprisoned not more than three years; and every such vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores which may have been procured for the building and equipment thereof, shall be forfeited, one-half to the use of the informer and the other half to the use of the United States.

* * * * * * *

The following are authoritative opinions relating to the foregoing Statutes:

It is also a well-established principle of American law that if a publication be calculated to alienate the affection of the people by bringing the Government into disesteem, whether the expedient resorted to be ridicule or obloquy, the writer and publisher are punishable; and whether the defendant really intended by his publi-

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cation to alienate the affection of the people from the Government or not is immaterial; if the publication be calculated to have that effect it is seditious.

Depredations by our citizens upon nations at peace with the United States, or combinations for committing them, have at all times been regarded by the American Government and people with the greatest abhorrence.

Military incursions by our citizens into countries so situated, and the commission of acts of violence on the members thereof, in order to effect a change in its government, or under any pretext whatever, have, from the commencement of our Government, been held equally criminal on the part of those engaged in them, and so much deserving punishment as would be the disturbance of the public peace by the perpetration of similar acts within our own territory.

No individuals have a right to hazard the peace of the country or to violate its laws upon vague notions of altering or reforming governments in other states.

By command of Brigadier-General Davis:

W. P. HALL, *Adjutant-General.*

GENERAL ORDERS, No. 128. } HDQRS. DEPARTMENT OF PORTO RICO, *San Juan, August 24, 1899.*

In order to avoid as far as possible the annoyance and damage caused by stray animals, it is hereby ordered—

1st. Alcaldes are authorized to impose fines for the benefit of the municipal treasuries upon the owners of stray animals found trespassing upon private property.

2nd. In the investigation of complaints of this character, alcaldes shall institute oral examination of the interested parties and their witnesses. For the purpose of taking such evidence the alcalde is authorized to administer oaths. Against his decision there shall be no appeal.

3rd. Fines imposed by alcaldes pursuant to the foregoing paragraphs shall be as follows:

For the first offence, one ($1) dollar per head.

For the second offence within six months, two ($2) dollars per head.

For each subsequent offence within six months, three ($3) dollars per head.

4th. Persons upon whom fines have been imposed pursuant to the foregoing paragraph who fail to pay the same within three days shall be arrested and confined in municipal jail one day for each dollar which they may fail to pay. Owners of property who suffer damages from stray animals may institute civil action before the proper court for such damages.

5th. A copy of this order in Spanish and in English shall be posted publicly on the door of every alcalde's office, for the information and guidance of all concerned.

6th. All laws or orders in conflict with the foregoing provisions are hereby revoked.

By command of Brigadier-General Davis:

W. P. HALL, *Adjutant-General.*

(See articles 619 et seq.)

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GENERAL ORDERS, No. 129. } HDQRS. DEPARTMENT OF PORTO RICO, *San Juan, August 24, 1899.*

1. It having come to the notice of the department commander that the provisions of the penal code of Porto Rico for the prevention of the crime of duelling have for some years past been disregarded by the authorities charged with their enforcement, and that persons have been permitted to engage in this pernicious practice without official interference or punishment, it is hereby announced that according to the spirit of American law and institutions it is a serious offence to challenge another to fight a duel, either by word or letter, or to be the bearer of such challenge, or to endeavor to provoke another to send a challenge, or to aid or abet in provoking or inciting a duel. To act as principal in a duel, or to participate in a duel as a second, attending surgeon, or assistant to either of the principals in a duel, whether either principal is injured or not, is a high misdemeanor.

2. Where one of the parties to a duel is killed, the survivor is guilty of murder, and all who are present aiding and abetting in the act are accomplices.

3. In order that there may be no misunderstanding regarding this matter in future, it is hereby ordered that all persons who participate in duels as challengers, bearers of challenges, or as provoking or endeavoring to provoke challenges to fight duels, shall be guilty of a misdemeanor and shall upon conviction thereof be punished by imprisonment at hard labor in jail for not less than three nor more than six months.

4. All persons who participate as principals, seconds, surgeons, or assistants in duels where there are no resulting wounds or injuries shall upon conviction thereof be punished by confinement at hard labor for not less than six months nor more than one year.

5. All persons who participate in duels either as principals, seconds, surgeons, or assistants, where one of the parties is wounded, shall be deemed guilty of assault with intent to kill and upon conviction thereof will be punished by confinement in the penitentiary at hard labor for not less than one year.

6. All persons participating in duels either as principals, seconds, surgeons, or assistants, where one of the parties is killed or dies as the result of a wound received in said duel, shall be deemed guilty (as principals or accomplices) of murder, and upon conviction thereof shall be punished accordingly.

7. The district courts instituted by General Orders, No. 114, current series, these headquarters, and the United States provisional court instituted by General Orders, No. 88, current series, these headquarters, shall have concurrent jurisdiction over the offences herein described. It is hereby made the duty of all judges and officers connected with the said courts, and of all municipal judges, alcaldes, and

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members of the insular and municipal police forces of this island to give immediate information to the nearest court having jurisdiction of any violation of this order.

8. All laws, decrees, or orders now or heretofore existing in conflict with the provisions of the foregoing order are hereby revoked and annulled.

By command of Brigadier-General Davis:

W. P. HALL, *Adjutant-General.*

GENERAL ORDERS, No. 151. } HDQRS. DEPARTMENT OF PORTO RICO, *San Juan, September 27, 1899.*

The following orders are published for the information and guidance of all concerned:

PURITY AND WHOLESOMENESS OF FOODS, DRINKS, DRUGS, AND MEDICINES.

1. Foods and drinks in the meaning of this order are all articles used for food or drink by man, whether simple or compound. The term drug includes all medicines used by man, whether for internal or external use.

2. No adulterated articles of food or drink shall be made or sold in Porto Rico. Articles ordinarily recognized as foods, which are really mixtures, may be sold if marked with the word "mixture" or "compound." No diseased, decomposed, offensive, or unclean article shall be used in the manufacture of any food, drink, or medicine.

3. No person shall sell in Porto Rico any impure, diseased, decayed, or unwholesome provisions, or any adulterated bread, or any food substance mixed with a poisonous substance.

4. No person, whether owner, manager, keeper of, agent, bartender, or clerk in any saloon, restaurant, boarding or eating house in Porto Rico, shall offer for sale any food or drink containing anything poisonous or unwholesome.

5. No person owning, renting, or leasing any stall, room, or stand where milk, meats, vegetables, or groceries are sold as food shall fail to keep said room, stall, or stand in a cleanly condition, nor shall such persons allow such milk, meats, vegetables, or groceries to become poisonous or infected or unfit for food by reason of uncleanly condition of such stall, room, or stand.

6. No person shall offer for sale in Porto Rico any unwholesome, watered, or adulterated milk, or milk produced from cows which are visibly diseased or are kept upon and fed on garbage, swill, or other deleterious substances.

7. No person in Porto Rico shall sell any article of food or drug which is not of the nature, substance, and quality of the article demanded by any purchaser; and no person shall sell any compound

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food or drug which is not composed of ingredients in accordance with the demand of the purchaser.

8. No person in Porto Rico shall substract from any article of food any part of it, so as to affect injuriously its quality, substance, or nature; and no person shall sell any article so altered without making disclosure of the alteration.

9. All drugs sold must be of the standard quality and strength prescribed in the Spanish or United States pharmacopœias.

10. All compound, proprietary, patent, or secret remedies sold in Porto Rico shall bear upon the bottle, box, or package an exact formula, stating the constituents of the medicine or remedy.

11. No pharmacist not a legally qualified physician shall prescribe remedies for the sick. Every bottle, box, or package containing any medicine or drug shall be labeled with the name of the same and with the name of the physician who wrote the prescription. Pharmacists shall not sell arsenic, strychnine, or their compounds, or other drugs commonly known as deadly poisons, except upon the prescriptions of legally qualified physicians. Before such sale is made the name of drug and its quantity, the name of the physician prescribing, and also the name of the purchaser shall be entered in a book especially kept for the purpose. The purchaser shall sign his name in a book below the entry made by the druggist. Every bottle, box, or package containing a dangerous drug shall be distinctly labeled "*Poison*," and the person shall be warned of the nature of the article.

12. Violation of the provision of this regulation shall, upon conviction, be punished with a fine of not less than $10 nor more than $200, or imprisonment for not less than five nor more than ninety days, at the discretion of the court.

By command of Brigadier-General Davis:

W. P. HALL, *Adjutant-General.*

GENERAL ORDERS, No. 152. } HDQRS. DEPARTMENT OF PORTO RICO, *San Juan, September 29, 1899.*

Upon the recommendation of the judicial board, the following is published for the information and guidance of all concerned:

I. In all cases wherein under the penal code now in force tribunals of justice may impose confinement as a punishment for crime the several courts having jurisdiction to impose such punishment are hereby authorized to add the imposition of hard labor to such punishment during the term of imprisonment wherever, in their judgment, the imposition of such labor may be advisable.

II. The court shall include in its sentence the designation of the jail wherein the prisoners sentenced for terms of less than six months shall serve their imprisonment; but the place of confinement of such

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prisoners may be changed by the board of prison control whenever the jail is crowded, or for other good cause.

III. All persons hereafter sentenced by the U. S. provisional or insular courts to imprisonment for a longer term than six months as a punishment for crime shall be imprisoned within the penitentiary at San Juan, and shall be subject during such confinement to all the rules and regulations of said penitentiary.

IV. All laws, orders, or decrees, or parts thereof, inconsistent with the provisions of this order are hereby repealed.

By command of Brigadier-General Davis:

C. H. HEYL,
Major, Inspector-General, U. S. A., Acting Adjutant-General.

GENERAL ORDERS, No. 54. } HDQRS. DEPARTMENT OF PORTO RICO, *San Juan, March 12, 1900.*

I. The following act of Congress, approved February 7th, 1896, is made locally applicable to this department, and is published for the information and guidance of all concerned:

Any person who, in any of the Territories or the District of Columbia, shall voluntarily engage in a pugilistic encounter between man and man or a fight between a man and a bull or any other animal, for money or for other thing of value, or for any championship, or upon the result of which any money or any thing of value is bet or wagered, or to see which any admission fee is charged, either directly or indirectly, shall be deemed guilty of a felony, and upon conviction shall be punished by imprisonment in the penitentiary not less than one nor more than five years.

By the term "pugilistic encounter," as used in this bill, is meant any voluntary fight by blows by means of fists or otherwise, whether with or without gloves, between two or more men, for money or for a prize of any character, or for any other thing of value, or for any championship, or upon the result of which any money or any thing of value is bet or wagered, or to see which any admission fee is charged, either directly or indirectly.

II. The district courts instituted by General Orders, No. 118, series 1899, these headquarters, shall have jurisdiction of all violations of this law, subject to the limitations of General Orders, No. 88, series of 1899, these headquarters.

By command of Brigadier-General Davis:

W. P. HALL, *Adjutant-General.*

GENERAL ORDERS, No. 87. } HDQRS. DEPARTMENT OF PORTO RICO, *San Juan, April 25, 1900.*

Upon the recommendation of the superior board of health, paragraphs 10, 11, and 12, of General Orders, No. 151, series of 1899, Headquarters Department of Porto Rico, are hereby revoked, and the following substituted therefor:

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10. Paragraph 8, of article 11, of the Spanish tariff law, in force immediately prior to the American occupation of Porto Rico, prohibited the importation of "pharmaceutical preparations or secret remedies of unknown composition, or the formulas of which have not been published." (Aranceles de Aduanas, Disposiciòn Undecima, art. 8.) With a view to carrying out the provisions of this former law, it is hereby ordered that on and after July 1, 1900, all proprietary, patent, or secret remedies sold in Porto Rico, shall bear upon the bottle, box, or package a number which shall correspond with the number on a duly attested formula, stating the constituents of the medicine or remedy, which formula must be deposited in the archives of the superior board of health of Porto Rico. A fee of twenty-five ($25.00) dollars will be paid to the superior board of health of Porto Rico, for the registration of each formula deposited under the provisions of this paragraph, which money, after deducting the necessary expenses of registration, will be turned into the treasury and applied toward the support of the laboratory of the superior board of health.

11. No pharmacist, not a legally qualified physician, shall prescribe for the sick. Every bottle, box, or package containing any medicine or drug, must, when dispensed, be labelled with the name of the same, or if dispensed on prescription, with the number of the prescription and the name of the physician who wrote it, as well as that of the pharmacist who compounded it. Pharmacists will file all prescriptions dispensed by them, and must not sell arsenic, strychnine, or their compounds, or other drugs commonly known as deadly poisons, except upon the prescriptions of legally qualified physicians. Before such sale is made, the name of the drug and its quality, the name of the physician prescribing it, and also the name of the purchaser, shall be entered in a book especially kept for the purpose. The purchaser shall sign his name in the book below the entry made by the druggist. Every bottle, box, or package containing a dangerous drug, shall be distinctly labelled "POISON," and the purchaser shall also be warned of the nature of the article.

12. Violations of any of the provisions of this order, or of any remaining provisions of General Orders, No. 151, series of 1899, these Headquarters, shall, upon conviction, be punished by a fine of not less than ten (10.00) dollars, nor more than two hundred (200.00) dollars, or by imprisonment for not less than five nor more than ninety days, or by both such fine and imprisonment at the discretion of the court. The district courts instituted by General Orders, No. 114, series of 1899, these headquarters, shall have jurisdiction in cases arising under this order, subject to the provisions of General Orders, No. 88, series of 1899, these headquarters.

By command of Brigadier-General Davis:

WM. E. ALMY,
Acting Adjutant-General.

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PENALTIES.

The translation of legal words and phrases from Spanish into English presents certain difficulties because Spanish and English procedure are so different. While both have some features in common, there are to be found courts, officials, and methods peculiar to each for which no exact equivalent can be found in the other language. The translator must be constantly on his guard against making an interpretation of law, and should never hesitate in a legal translation to sacrifice, what may be called good English, for fidelity to the original text. It therefore becomes necessary at times to leave the original expression untranslated rather than make a paraphrase of an expression for which there is no exact equivalent.

This feature of legal translation may be illustrated by calling attention to the manner in which Spanish law deals with the subject of penalties. They are divided into corporal (*aflictivas*), correctional (*correccionales*), and light (*leves*). There are penalties common to these three classes and also accessory penalties (*penas accesorias*), fractional penalties (*penas fraccionales*), and composite (*compuestas*), and from these different classes there have been developed in the penal code sixty degrees of penalties.

The penalties *aflictivas* or *correccionales* employed in the penal code, which are included in the general scale of article 24, are comprised in one or more of the six graduated scales of article 90, formed for the purpose of regulating the increase or reduction of certain penalties for crimes committed, frustrated, or attempted, for complicity therein, concealment, and for the purpose of taking into account aggravating or extenuating circumstances.

A simple penalty according to the general scale would be, for example, *arresto mayor*, *prisión correccional*, or banishment. A double penalty is created by the imposition of two or more simple penalties—as, for example, *arresto mayor* and a fine. An alternative penalty leaves the imposition of one, two, or more simple penalties to the discretion of the court—as, for example, *arresto mayor*, banishment, or a fine. Fractional penalties are those which permit the imposition of one or two stated degrees of a given penalty and even of a certain portion or combination of penalties—as, for example, *arresto mayor* in its maximum degree, or *prisión correccional* in its minimum and medium degrees. At other times penalties *compuestas* are imposed, these

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being two or more penalties either to their fullest extent or divided—as, for example, *cadena temporal* to *cadena perpetua*, or *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree.

Such varied and multiplied combinations of penalties have given rise to what may be called nine scales and sixty degrees of penalties, as is shown in the following table, while the second table shows the duration of the penalties in all their forms and combinations.

Groups and Scales of Penalties.

In the first group are included the six scales of penalties given in article 90, which are fundamental and necessarily serve as a basis and guide for the rest.

In the second group are included the penalties composed of two or more divisible or indivisible penalties, but indicated in their full extent.

In the third group are included those composed of one or two indivisible penalties and of the maximum degree or of the medium and maximum of a divisible penalty.

In the fourth group are included the penalties formed with three or more degrees of two penalties, subdividing them by the same rule into three, four, or five degrees.

In the fifth group are included the subdivided penalties of three or more degrees.

In the sixth group are included the penalties formed of two degrees of one or two penalties.

In the seventh are included the subdivided penalties of two degrees.

In the eighth group are those with but one degree.

In the ninth group are included the subdivided penalties of one degree.

FIRST GROUP.

[Graduated scales of article 92 of the Code, and which are therefore considered fundamental.]

Scale No. 1.—Death, *cadena perpetua*, *cadena temporal*, *presidio mayor*, *presidio correccional*, *arresto*.

Scale No. 2.—Death, *reclusión perpetua*, *reclusión temporal*, *prisión mayor*, *prisión correccional*, *arresto*.

Scale No. 3.—*Relegación perpetua*, *relegación temporal*, *confinamiento*, banishment, public censure, caution.

Scale No. 4.—Perpetual expulsion, temporal expulsion, *confinamiento*, banishment, public censure, caution.

Scale No. 5.—Perpetual absolute disqualification, temporary absolute disqualification, suspension from public office, the right of suffrage (active and passive), profession, or trade.

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Scale No. 6.—Perpetual special disqualification for public office, the right of suffrage (active or passive), profession, or trade; temporary special disqualification for public office, the right of suffrage (active and passive), profession, or trade; suspension from public office, the right of suffrage (active and passive), profession, and trade.

SECOND GROUP.

[Penalties composed of two or more divisible or indivisible penalties to their fullest extent, which in their reduction are governed by the second rule of article 76.]

Scale No. 7.—*Cadena perpetua* to death, *cadena temporal*, *presidio mayor*, *presidio correccional.*

Scale No. 8.—*Reclusión perpetua* to death, *reclusión temporal*, *prisión mayor*, *prisión correccional*, *arresto.*

Scale No. 9.—*Cadena temporal* to *cadena perpetua*, *presidio mayor*, *presidio correccional*, *arresto.*

Scale No. 10.—Temporary absolute disqualification to perpetual absolute disqualification; temporary special disqualification, suspension from public office, the right of suffrage, active and passive, profession or trade.

Scale No. 11.—*Reclusión temporal* to *reclusión perpetua*, *prisión mayor*, *prisión correccional*, *arresto.*

Scale No. 12.—*Reclusión temporal* to death, *prisión mayor*, *prisión correccional*, *arresto.*

THIRD GROUP.

[Penalties composed of one or two indivisible penalties and of the maximum degree (or of the medium and maximum) of a divisible penalty, which in their decrease are governed by the third rule of article 74.]

Scale No. 13.—*Cadena temporal* in its maximum degree to *cadena perpetua; presidio mayor* in its maximum degree to *cadena temporal* in its medium degree; *presidio correccional* in its maximum degree to *presidio mayor* in its medium degree; *arresto mayor* in its maximum degree to *presidio correccional* in its medium degree.

Scale No. 14.—*Cadena temporal* in its maximum degree to death; *presidio mayor* in its maximum degree to *cadena temporal* in its medium degree.

(The decrease follows as in the above; it is the third case of the demonstrative table of article 75.)

Scale No. 15.—Temporary absolute disqualification in its maximum degree to perpetual absolute disqualification; suspension from ——— in its maximum degree to temporary absolute disqualification in its medium degree; fine to suspension in its medium degree.

Scale No. 16.—*Reclusión temporal* in its maximum degree to death; *prisión mayor* in its maximum degree to *reclusión temporal* in its

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medium degree; *prisión correccional* in its maximum degree to *prisión mayor* in its medium degree; *arresto mayor* in its maximum degree to *prisión correccional* in its medium degree; fine or *arresto mayor* in its medium degree.

Scale No. 17.—Relegación temporal in its maximum degree to *relegación perpetua; confinamiento* in its maximum degree to *relegación temporal* in its medium degree; banishment in its maximum degree to *confinamiento* in its medium degree; public censure to banishment in its medium degree.

Scale No. 18.—Cadena temporal in its medium degree to *cadena perpetua; presidio mayor* in its medium degree to *cadena temporal* in its minimum degree; *presidio correccional* in its medium degree to *presidio mayor* in its minimum degree; *arresto mayor* in its medium degree to *presidio correccional* in the minimum degree; fine to *arresto mayor* in its minimum degree.

FOURTH GROUP.

[Penalties composed of three or more degrees of two penalties, which in their decrease are governed by rule fourth of article 74.]

Scale No. 19.—Arresto mayor in its maximum degree to *prisión correccional* in its medium degree; fine to *arresto mayor* in its medium degree.

Scale No. 20.—Presidio correccional in its maximum degree to *presidio mayor* in its medium degree; *arresto mayor* in its maximum degree to *presidio correccional* in its medium degree; fine to *arresto mayor* in its medium degree.

Scale No. 21.—Presidio mayor in its medium degree to *cadena temporal* in its minimum degree; *presidio correccional* in its medium degree to *presidio mayor* in its minimum degree; *arresto mayor* in its medium degree to *presidio correccional* in its minimum degree; fine to *arresto mayor* in its minimum degree.

Scale No. 22.—Prisión mayor in its medium degree to *reclusión temporal* in its minimum degree; *prisión correccional* in its medium degree to *prisión mayor* in its minimum degree; *arresto mayor* in its medium degree to *prisión correccional* in its minimum degree; fine to *arresto mayor* in its minimum degree.

Scale No. 23.—Suspension from ——— in its maximum degree to temporary absolute disqualification in its medium degree; fine to suspension from ——— in its medium degree.

Scale No. 24 (of four degrees).—*Arresto mayor* to *prisión correccional* in its minimum degree; fine.

Scale No. 25.—Confinamiento in its maximum degree to *relegación temporal;* banishment in its maximum degree to *confinamiento* in its medium degree; public censure to banishment in its medium degree; caution; fine.

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Scale No. 26.—Temporary special disqualification in its maximum degree to perpetual special disqualification; suspension from ——— in its maximum degree to temporary special disqualification in its medium degree; fine to suspension in its medium degree.

Scale No. 27.—Suspension in its medium and maximum degrees to temporary absolute disqualification in its medium degree; fine to suspension in its minimum degree.

Scale No. 27.—Suspension in its medium and maximum degrees to temporary absolute disqualification in its medium degree; fine to suspension in its minimum degree.

Scale No. 28 (of five degrees).—*Presidio correccional* to *presidio mayor* in its medium degree; *arresto mayor;* fine.

Scale No. 29.—*Prisión mayor* in its medium degree to *reclusión temporal; prisión correccional* in its medium degree to *prisión mayor* in its minimum degree; *arresto mayor* in its medium degree to *prisión correccional* in its minimum degree; fine to *arresto mayor* in its minimum degree.

FIFTH GROUP.

[Subdivided penalties composed of three or more degrees included in the fourth group, which decrease according to rule 5.]

Scale No. 30.—The minimum degree of *presidio correccional* in its medium degree to *presidio mayor* in the same degree; the minimum degree of *arresto mayor* in its medium degree to *presidio correccional* in its minimum degree; fine (or the minimum degree of fine to *arresto mayor* in its minimum degree).

Scale No. 31.—The maximum degree of *presidio correccional* in its medium degree to *presidio mayor* in its minimum degree; the maximum degree of *arresto mayor* in its medium degree to *presidio correccional* in its minimum; *arresto mayor* in its minimum degree (or the maximum degree of fine to *arresto mayor* in its minimum degree).

Scale No. 32 (of three degrees).—The maximum degree of *presidio correccional* in its maximum degree to *presidio mayor* in its medium degree; the maximum degree of *arresto mayor* in its maximum degree to *presidio correccional* in its medium degree; *arresto mayor* in its medium degree (or the maximum degree of fine to *arresto mayor* in its medium degree).

Scale No. 33 (of three degrees).—The maximum degree of *presidio mayor* in its medium degree to *cadena temporal* in its minimum degree; the maximum degree of *presidio correccional* in its medium degree to *presidio mayor* in its minimum; the maximum degree of *arresto mayor* in its medium degree to *presidio correccional* in the minimum; *arresto mayor* in its minimum degree (or the maximum degree of fine to *arresto mayor* in its minimum degree).

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Scale No. 34 (of five degrees).—The maximum degree of *presidio correccional* to *presidio mayor* in its medium degree; the maximum degree of *arresto mayor;* fine.

SIXTH GROUP.

[Divided penalties which are formed with two degrees of one penalty or of two distinct penalties.]

Scale No. 35.—*Confinamiento* in its minimum and medium degrees; banishment in its medium and maximum degrees; public censure to banishment in its minimum degree; caution.

Scale No. 36.—Banishment in its minimum and medium degrees; public censure; caution.

Scale No. 37.—Temporary absolute disqualification in its minimum and medium degrees; suspension in its medium and maximum degrees; fine to suspension in its minimum degree.

Scale No. 38.—*Presidio correccional* in its maximum degree to *presidio mayor* in its minimum degree; *presidio correccional* in its minimum and medium degrees; *arresto mayor* in its medium and maximum degrees; fine (or *arresto mayor* in its minimum degree).

Scale No. 39.—*Presidio mayor* in its minimum and medium degrees; *presidio correccional* in its medium and maximum degrees; *arresto mayor* in its maximum degree to *presidio correccional* in the minimum degree; *arresto mayor* in its minimum and medium degrees; fine.

Scale No. 40.—*Prisión mayor* in its medium and maximum degrees; *prisión correccional* in its maximum degree to *prisión mayor* in its minimum degree; *prisión correccional* in its minimum and medium degrees; *arresto mayor* in its medium and maximum degrees; fine to *arresto mayor* in its minimum degree.

Scale No. 41.—*Reclusión temporal* in its medium and maximum degrees; *prisión mayor* in its maximum degree to *reclusión temporal* in its minimum degree; *prisión mayor* in its minimum and medium degrees; *prisión correccional* in its medium and maximum degrees; *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree; *arresto mayor* in its minimum and medium degrees; fine.

Scale No. 42.—Suspension in its maximum degree to temporary absolute disqualification in its minimum degree; suspension in its minimum and medium degrees; fine.

SEVENTH GROUP.

[Subdivided penalties formed with two degrees of one penalty or of two distinct penalties.]

Scale No. 43.—The minimum degree of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree; the minimum degree of *arresto mayor* in its minimum and medium degrees; fine.

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Scale No. 44.—The maximum degree of *presidio correccional* in its maximum degree to *presidio mayor* in its minimum; the maximum degree of *presidio correccional* in its minimum and medium degrees; the maximum degree of *arresto mayor* in its medium and maximum degrees; *arresto mayor* in its minimum degree (or maximum degree of fine to *arresto mayor* in its minimum degree).

Scale No. 45.—Maximum degree of *prisión correccional* in its minimum to medium degrees; maximum degree of *arresto mayor* in its medium and maximum degrees; maximum degree of fine to *arresto mayor* in its minimum degree.

Scale No. 46.—Maximum degree of *prisión correccional* in its medium to maximum degree; maximum degree of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum; maximum degree of *arresto mayor* in its minimum and medium degrees; fine.

EIGHTH GROUP.

[Divided penalties which include but one degree of divisible penalties.]

Scale No. 47.—*Arresto mayor* in its minimum degree; fine.

Scale No. 48.—*Arresto mayor* in its medium degree; fine.

Scale No. 49.—*Arresto mayor* in its maximum degree; fine.

Scale No. 50.—*Cadena temporal* in its maximum degree; *presidio mayor* in its maximum degree; *presidio correccional* in its maximum degree; *arresto mayor* in its maximum degree.

Scale No. 51.—*Confinamiento* in its minimum degree; banishment in its minimum degree; public censure; caution.

Scale No. 52.—Temporary absolute disqualification for public office in its minimum degree; suspension from ——— in its minimum degree.

Scale No. 53.—Temporary special disqualification in its minimum degree; suspension from ——— in its minimum degree.

Scale No. 54.—*Relegación temporal* in its maximum degree; *confinamiento* in its maximum degree; banishment in its maximum degree; public censure; caution.

Scale No. 55.—*Presidio correccional* in its medium degree; *arresto mayor* in its medium degree; fine.

Scale No. 56.—*Presidio mayor* in its minimum degree; *presidio correccional* in its minimum degree; *arresto mayor* in its minimum degree.

Scale No. 57.—*Presidio mayor* in its medium degree; *presidio correccional* in its medium degree; *arresto mayor* in its medium degree; fine.

Scale No. 58.—*Cadena temporal* in its minimum degree; *presidio mayor* in its minimum degree; *presidio correccional* in its minimum degree; *arrasto mayor* in its minimum degree.

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NINTH GROUP.

[Subdivided penalties of the eighth group.]

Scale No. 59.—Maximum degree of *confinamiento* in its maximum degree; maximum degree of that of banishment in its maximum degree; public censure; caution.

Scale No. 60.—Maximum degree of *relegación temporal* in its maximum degree; maximum degree of *confinamiento* in its maximum degree; maximum degree of banishment in its maximum degree; public censure; caution.

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General table of the duration of penalties in all the forms and combinations prescribed in the code and their division into degrees.

Penalties.	Time included in the entire penalty.	Time included in its minimum degree.	Time included in its medium degree.	Time included in its maximum degree.
1. *Arresto mayor*	From 1 month and 1 day to 6 months.	From 1 to 2 months	From 2 months and 1 day to 4 months.	From 4 months and 1 day to 6 months.
2. *Arresto mayor* in its minimum degree.	From 1 month and 1 day to 2 months.	From 1 month and 1 day to 1 month and 10 days.	From 1 month and 11 days to 1 month and 20 days.	From 1 month and 21 days to 2 months.
3. *Arresto mayor* in its medium degree.	From 2 months and 1 day to 4 months.	From 2 months and 1 day to 2 months and 20 days.	From 2 months and 21 days to 3 months and 10 days.	From 3 months and 11 days to 4 months.
4. *Arresto mayor* in its maximum degree.	From 4 months and 1 day to 6 months.	From 4 months and 1 day to 4 months and 20 days.	From 4 months and 21 days to 5 months and 10 days.	From 5 months and 11 days to 6 months.
5. *Arresto mayor* in its minimum and medium degrees.	From 1 month and 1 day to 4 months.	From 1 month and 1 day to 2 months.	From 2 months and 1 day to 3 months.	From 3 months and 1 day to 4 months.
6. *Arresto mayor* in its medium and maximum degrees.	From 2 months and 1 day to 6 months.	From 2 months and 1 day to 3 months and 10 days.	From 3 months and 11 days to 4 months and 20 days.	From 4 months and 21 days to 6 months.
7. Maximum degree of *arresto mayor* in its minimum and medium degrees.	From 3 months and 1 day to 4 months.	From 3 months and 1 day to 3 months and 10 days.	From 3 months and 11 days to 3 months and 20 days.	From 3 months and 21 days to 4 months.
8. *Arresto mayor* to *prisión correccional* in its minimum degree.	From 1 month and 1 day to 2 years and 4 months.	From 1 month and 1 day to 10 months.	From 10 months and 1 day to 1 year and 7 months.	From 1 year 7 months and 1 day to 2 years and 4 months.
9. *Arresto mayor* to *prisión correccional* in its maximum degree.	From 1 month and 1 day to 6 years.	From 1 month and 1 day to 2 years and 20 days.	From 2 years and 21 days to 4 years and 10 days.	From 4 years and 11 days to 6 years.
10. *Arresto mayor* in its medium degree to *prisión* (or *presidio*) *correccional* in its minimum degree.	From 2 months and 1 day to 2 years and 4 months.	*Arresto mayor* in its medium degree.	*Arresto mayor* in its maximum degree.	*Prisión correccional* in its minimum degree.
11. *Arresto mayor* in its maximum degree to *prisión* (or *presidio*) *correccional* in its minimum degree.	From 4 months and 1 day to 2 years and 4 months.	From 4 months and 1 day to 1 year.	From 1 year and 1 day to 1 year and 8 months.	From 1 year 8 months and 1 day to 2 years and 4 months.
12. *Arresto mayor* in its maximum degree to *prisión* (or *presidio*) *correccional* in its medium degree.	From 4 months and 1 day to 4 years and 2 months.	*Arresto mayor* in its maximum degree.	*Prisión correccional* in its minimum degree.	*Prisión correccional* in its medium degree.

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13. Maximum degree of *arresto mayor* in its medium degree to *presidio correccional* in its minimum.	*Presidio correccional* in its minimum degree. (From 6 months and 1 day to 2 years and 4 months.	From 6 months and 1 day to 1 year 1 month and 10 days.	From 1 year 1 month and 11 days to 1 year 8 months and 20 days.	From 1 year 8 months and 21 days to 2 years and 4 months.
14. Minimum degree of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree.	From 4 months and 1 day to 1 year.	From 4 months and 1 day to 6 months and 20 days.	From 6 months and 21 days to 9 months and 10 days.	From 9 months and 11 days to 1 year.
15. Maximum degree of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum.	From 1 year 8 months and 1 day to 2 years and 4 months.	From 1 year 8 months and 1 day to 1 year 10 months and 20 days.	From 1 year 10 months and 21 days to 2 years 1 month and 10 days.	From 2 years 1 month and 11 days to 2 years and 4 months.
16. *Cadena temporal*.....	From 12 years and 1 day to 20 years.	From 12 years and 1 day to 14 years and 8 months.	From 14 years 8 months and 1 day to 17 years and 4 months.	From 17 years 4 months and 1 day to 20 years.
17. *Cadena temporal* to *cadena perpetua*.	From 12 years and 1 day to *cadena perpetua*.	From 12 years and 1 day to 16 years.	From 16 years and 1 day to 20 years.	*Cadena perpetua*.
18. *Cadena temporal* in its medium degree to *cadena perpetua*.	From 14 years 8 months and 1 day to *cadena perpetua*.	The medium degree of *cadena temporal*.	Maximum degree of *cadena temporal*.	Do.
19. Maximum degree of *cadena temporal*.	From 17 years 4 months and 1 day to 20 years.	From 17 years 4 months and 1 day to 18 years 2 months and 20 days.	From 18 years 2 months and 21 days to 19 years 1 month and 10 days.	From 16 years 1 month and 10 days to 20 years.
20. *Cadena temporal* in its maximum degree to *cadena perpetua*.	From 17 years 4 months and 1 day to *cadena perpetua*.	From 17 years 4 months and 1 day to 18 years and 8 months.	From 18 years 8 months and 1 day to 20 years.	*Cadena perpetua*.
21. *Cadena temporal* in its maximum degree to death.	From 17 years 4 months and 1 day to death.	*Cadena temporal* in its maximum degree.	*Cadena perpetua*.....	Death.
22. *Cadena perpetua* to death.....	*Cadena perpetua* to death.....	*Cadena perpetua* (according to the rules of article 79).	*Cedena perpetua* (according to the rules of article 79).	Do.
23. *Confinamiento*.....	From 6 years and 1 day to 12 years.	From 6 years and 1 day to 8 years.	From 8 years and 1 day to 10 years.	From 10 years and 1 day to 12 years.
24. *Confinamiento* in its minimum degree.	From 6 years and 1 day to 8 years.	From 6 years and 1 day to 6 years and 8 months.	From 6 years 8 months and 1 day to 7 years and 4 months.	From 7 years 4 months and 1 day to 8 years.
25. *Confinamiento* in its minimum and medium degrees.	From 6 years and 1 day to 10 years.	From 6 years and 1 day to 7 years and 4 months.	From 7 years 4 months and 1 day to 8 years and 8 months.	From 8 years 8 months and 1 day to 10 years.
26. *Confinamiento* in its maximum degree.	From 10 years and 1 day to 12 years.	From 10 years and 1 day to 10 years and 8 months.	From 10 years 8 months and 1 day to 11 years and 4 months.	From 11 years 4 months and 1 day to 12 years.

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General table of the duration of penalties in all the forms and combinations prescribed in the code and their division into degrees—Continued.

Penalties.	Time included in the entire penalty.	Time included in its minimum degree.	Time included in its medium degree	Time included in its maximum degree.
27. Maximum degree of *confinamiento* in its maximum degree.	From 11 years 4 months and 1 day to 12 years.	From 11 years 4 months and 1 day to 11 years 6 months and 20 days.	From 11 years 6 months and 21 days to 11 years 9 months and 10 days.	From 11 years 9 months and 11 days to 12 years.
28. *Confinamiento* in its maximum degree to *relegación temporal.*	From 10 years and 1 day to 20 years.	From 10 years and 1 day to 13 years and 4 months.	From 13 years 4 months and 1 day to 16 years and 8 months.	From 16 years 8 months and 1 day to 20 years.
29. Disqualification in its minimum degree.	From 6 years and 1 day to 8 years.	From 6 years and 1 day to 6 years and 8 months.	From 6 years 8 months and 1 day to 7 years and 4 months.	From 7 years 4 months and 1 day to 8 years.
30. Disqualification in its minimum and medium degrees.	From 6 years and 1 day to 10 years.	From 6 years and 1 day to 7 years and 4 months.	From 7 years 4 months and 1 day to 8 years and 8 months.	From 8 years 8 months and 1 day to 10 years.
31. Disqualification in its maximum degree to perpetual disqualification.	From 10 years and 1 day to perpetual disqualification.	From 10 years and 1 day to 11 years.	From 11 years and 1 day to 12 years.	Perpetual disqualification.
32. Temporary absolute disqualification to perpetual.	From 6 years and 1 day to perpetual disqualification.	From 6 years and 1 day to 9 years.	From 9 years and 1 day to 12 years.	Do.
33. *Presidio, prisión correccional* and banishment.	From 6 months and 1 day to 6 years.	From 6 months and 1 day to 2 years and 4 months.	From 2 years 4 months and 1 day to 4 years and 2 months.	From 4 years 2 months and 1 day to 6 years.
34. *Presidio correccional* in its minimum degree.	From 6 months and 1 day to 2 years and 4 months.	From 6 months and 1 day to 1 year 1 month and 10 days.	From 1 year 1 month and 11 days to 1 year 8 months and 20 days.	From 1 year 8 months and 21 days to 2 years and 4 months.
35. *Presidio correccional* in its medium degree.	From 2 years 4 months and 1 day to 4 years and 2 months.	From 2 years 4 months and 1 day to 2 years 11 months and 10 days.	From 2 years 11 months and 11 days to 3 years 6 months and 20 days.	From 3 years 6 months and 21 days to 4 years and 2 months.
36. *Presidio correccional* in its minimum and medium degrees.	From 6 months and 1 day to 4 years and 2 months.	From 6 months and 1 day to 1 year 8 months and 20 days.	From 1 year 8 months and 21 days to 2 years 11 months and 10 days.	From 2 years 11 months and 11 days to 4 years and 2 months.
37. *Presidio correccional* in its medium and maximum degrees.	From 2 years 4 months and 1 day to 6 years.	From 2 years 4 months and 1 day to 3 years 6 months and 20 days.	From 3 years 6 months and 21 days to 4 years 9 months and 10 days.	From 4 years 9 months and 11 days to 6 years.
38. *Presidio correccional* in its maximum degree.	From 4 years 2 months and 1 day to 6 years.	From 4 years 2 months and 1 day to 4 years 9 months and 10 days.	From 4 years 9 months and 11 days to 5 years 4 months and 20 days.	From 5 years 4 months and 21 days to 6 years.
39. *Presidio correccional* in its medium degree to *presidio mayor* in the minimum.	From 2 years 4 months and 1 day to 8 years.	The medium degree of *presidio correccional.*	The maximum degree of *presidio correccional.*	The minimum degree of *presidio mayor.*

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40. *Presidio correccional* in its maximum degree to *presidio mayor* in its minimum degree.	From 4 years 2 months and 1 day to 8 years.	From 4 years 2 months and 1 day to 5 years 5 months and 10 days.	From 5 years 5 months and 11 days to 6 years 8 months and 20 days.	From 6 years 8 months and 21 days to 8 years.
41. *Presidio correccional* in its maximum degree to *presidio mayor* in its medium degree.	From 4 years 2 months and 1 day to 10 years.	The maximum degree of *presidio correccional.*	The minimum degree of *presidio mayor.*	The medium degree of *presidio mayor.*
42. *Presidio correccional* to *presidio mayor* in its medium degree.	From 6 months and 1 day to 10 years.	From 6 months and 1 day to 3 years and 8 months.	From 3 years 8 months and 1 day to 6 years and 10 months.	From 6 years 10 months and 1 day to 10 years.
43. Minimum degree of *presidio correccional* in its medium degree to *presidio mayor* in its minimum.	From 2 years 4 months and 1 day to 4 years and 2 months.	From 2 years 4 months and 1 day to 2 years 11 months and 10 days.	From 2 years 11 months and 11 days to 3 years 6 months and 20 days.	From 3 years 6 months and 21 days to 4 years and 2 months.
44. Maximum degree of *presidio correccional* in its minimum and medium degrees.	From 2 years 11 months and 11 days to 4 years and 2 months.	From 2 years 11 months and 11 days to 3 years 4 months and 7 days.	From 3 years 4 months and 8 days to 3 years 9 months and 3 days.	From 3 years 9 months and 4 days to 4 years and 2 months.
45. Maximum degree of *presidio correccional* in its medium to the maximum degrees.	From 4 years 9 months and 11 days to 6 years.	From 4 years 9 months and 11 days to 5 years 2 months and 7 days.	From 5 years 2 months and 8 days to 5 years 7 months and 4 days.	From 5 years 7 months and 5 days to 6 years.
46. Maximum degree of *presidio correccional* in its medium degree to *presidio mayor* in the minimum.	From 6 years and 1 day to 8 years.	From 6 years and 1 day to 6 years and 8 months.	From 6 years 8 months and 1 day to 7 years and 4 months.	From 7 years 4 months and 1 day to 8 years.
47. Maximum degree of *presidio correccional* in its maximum degree to *presidio mayor* in the minimum.	From 6 years 8 months and 21 days to 8 years.	From 6 years 8 months and 21 days to 7 years 1 month and 24 days.	From 7 years 1 month and 25 days to 7 years 6 months and 27 days.	From 7 years 6 months and 28 days to 8 years.
48. Maximum degree of *presidio correccional* in its maximum degree to *presidio mayor* in its medium degree.	From 8 years and 1 day to 10 years. (Medium degree of *presidio mayor.*)	From 8 years and 1 day to 8 years and 8 months.	From 8 years 8 months and 1 day to 9 years and 4 months.	From 9 years 9 months and 1 day to 10 years.
49. Maximum degree of *presidio correccional* to *presidio mayor* in its medium degree.	From 6 years 10 months and 1 day to 10 years.	From 6 years 10 months and 1 day to 7 years 10 months and 20 days.	From 7 years 10 months and 21 days to 8 years 11 months and 10 days.	From 8 years 11 months and 11 days to 10 years.
50. *Presidio: Prisión mayor*	From 6 years and 1 day to 12 years.	From 6 years and 1 day to 8 years.	From 8 years and 1 day to 10 years.	From 10 years and 1 day to 12 years.
51. *Prisión mayor* in its minimum and medium degrees.	From 6 years and 1 day to 10 years.	From 6 years and 1 day to 7 years and 4 months.	From 7 years 4 months and 1 day to 8 years and 8 months.	From 8 years 8 months and 1 day to 10 years.
52. *Prisión mayor* in its medium and maximum degrees.	From 8 years and 1 day to 12 years.	From 8 years and 1 day to 9 years and 4 months.	From 9 years 4 months and 1 day to 10 years and 8 months.	From 10 years 8 months and 1 day to 12 years.

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General table of the duration of penalties in all the forms and combinations prescribed in the code and their division into degrees—Continued.

Penalties.	Time included in the entire penalty.	Time included in its minimum degree.	Time included in its medium degree.	Time included in its maximum degree.
53. *Prisión mayor* in its maximum degree.	From 10 years and 1 day to 12 years.	From 10 years and 1 day to 10 years and 8 months.	From 10 years 8 months and 1 day to 11 years and 4 months.	From 11 years 4 months and 1 day to 12 years.
54. *Prisión mayor* in its medium degree to *reclusión temporal* in the minimum.	From 8 years and 1 day to 14 years and 8 months.	*Prisión mayor* in its medium degree (8 years and 1 day to 10 years).	*Prisión mayor* in its maximum degree (10 years and 1 day to 12 years).	*Reclusión temporal* in its minimum degree (12 years and 1 day to 14 years and 8 months.
55. *Prisión mayor* in its medium degree to *reclusión temporal* to its full extent.	From 8 years and 1 day to 20 years.	From 8 years and 1 day to 12 years.	From 12 years and 1 day to 16 years.	From 16 years and 1 day to 20 years.
56. *Presidio mayor* in its medium degree to *cadena temporal* in its minimum degree.	From 8 years and 1 day to 14 years and 8 months.	From 8 years and 1 day to 10 years. (Medium degree of *presidio mayor*.)	From 10 years and 1 day to 12 years. (Maximum degree of *presidio mayor*).	From 12 years and 1 day to 14 years and 8 months. (Minimum degree of *cadena*.)
57. Maximum degree of *presidio mayor* in its medium degree to *cadena temporal* in its minimum degree.	From 12 years and 1 day to 14 years and 8 months. (Minimum degree of *cadena temporal*.)	From 12 years and 1 day to 12 years 10 months and 20 days.	From 12 years 10 months and 21 days to 13 years 9 months and 10 days.	From 13 years 9 months and 11 days to 14 years and 8 months.
58. *Reclusión temporal*	From 12 years and 1 day to 20 years.	From 12 years and 1 day to 14 years and 8 months.	From 14 years 8 months and 1 day to 17 years and 4 months.	From 17 years 4 months and 1 day to 20 years.
59. *Reclusión temporal* in its medium and maximum degrees.	From 14 years 8 months and 1 day to 20 years.	From 14 years 8 months and 1 day to 16 years 5 months and 10 days.	From 16 years 5 months and 11 days to 18 years 2 months and 20 days.	From 18 years 2 months and 21 days to 20 years.
60. *Reclusión temporal* to *reclusión perpetua*.	From 12 years and 1 day to *reclusión perpetua*.	From 12 years and 1 day to 16 years.	From 16 years and 1 day to 20 years.	*Reclusión perpetua*.
61. *Reclusión temporal* to death	From 12 years and 1 day to death.	From 12 years and 1 day to 20 years.	*Reclusión perpetua*	Death.
62. *Reclusión temporal* in its maximum degree to death.	From 17 years 4 months and 1 day to death.	From 17 years 4 months and 1 day to 20 years.	do	Do.
63. *Reclusión perpetua* to death	*Reclusión perpetua* to death	*Reclusión perpetua*	do	Do.
64. *Relegación temporal*	From 12 years and 1 day to 20 years.	From 12 years and 1 day to 14 years and 8 months.	From 14 years 8 months and 1 day to 17 years and 4 months.	From 17 years 4 months and 1 day to 20 years.
65. *Relegación temporal* in its maximum degree.	From 17 years 4 months and 1 day to 20 years.	From 17 years 4 months and 1 day to 18 years 2 months and 20 days.	From 18 years 2 months and 21 days to 19 years 1 month and 10 days.	From 19 years 1 month and 11 days to 20 years.

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66. Maximum degree of *relegación temporal* in its maximum degree.	From 19 years 1 month and 11 days to 20 years.	From 19 years 1 month and 11 days to 19 years 4 months and 25 days.	From 19 years 4 months and 26 days to 19 years 8 months and 13 days.	From 19 years 8 months and 14 days to 20 years.
67. *Relegación temporal* in its maximum degree to *relegación perpetua.*	From 17 years 4 months and 1 day to *relegación perpetua.*	From 17 years 4 months and 1 day to 18 years and 8 months.	From 18 years 8 months and 1 day to 20 years.	*Relegación perpetua.*
68. Suspension	From 1 month and 1 day to 6 years.	From 1 month and 1 day to 2 years.	From 2 years and 1 day to 4 years.	From 4 years and 1 day to 6 years.
69. Suspension in its minimum and medium degrees.	From 1 month and 1 day to 4 years.	From 1 month and 1 day to 1 year 4 months and 20 days.	From 1 year 4 months and 21 days to 2 years 8 months and 10 days.	From 2 years 8 months and 11 days to 4 years.
70. Suspension in its medium and maximum degrees.	From 2 years and 1 day to 6 years.	From 2 years and 1 day to 3 years and 4 months.	From 3 years 4 months and 1 day to 4 years and 8 months.	From 4 years 8 months and 1 day to 6 years.
71. Suspension in its maximum degree to temporary absolute disqualification in its minimum degree.	From 4 years and 1 day to 8 years.	From 4 years and 1 day to 5 years and 4 months.	From 5 years 4 months and 1 day to 6 years and 8 months.	From 6 years 8 months and 1 day to 8 years.
72. Suspension in its maximum degree to temporary absolute disqualification in its medium degree.	From 4 years and 1 day to 10 years.	Maximum degree of suspension. (From 4 years and 1 day to 6 years.)	Minimum degree of disqualification. (From 6 years and 1 day to 8 years.)	Medium degree of disqualification. (From 8 years and 1 day to 10 years.)
73. Suspension in its medium and maximum degrees to temporary absolute disqualification in its medium degree.	From 2 years and 1 day to 10 years.	From 2 years and 1 day to 4 years and 8 months.	From 4 years 8 months and 1 day to 7 years and 4 months.	From 7 years 4 months and 1 day to 10 years.

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TRANSLATION

OF

THE LAW OF PORTS

IN FORCE IN

THE ISLAND OF CUBA.

DIVISION OF CUSTOMS AND INSULAR AFFAIRS,
WAR DEPARTMENT.
May, 1900.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1900.

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ROYAL DECREE.

In view of the reasons submitted to me by the colonial secretary, making use of the authority granted the Government by article 89 of the Constitution of the Monarchy, and in pursuance with the report of the council of state in full:

In the name of My August Son the King, Don Alfonso XIII, and as Queen Regent of the Kingdom,

I decree the following:

ARTICLE 1. The law of ports promulgated for the Peninsula on May 7, 1880, shall be in force in the island of Cuba without any other amendments than those contained in the annexed text.

ART. 2. The colonial secretary shall issue the instructions for the execution of the law, and shall inform the Cortes of this decree.

Issued at the Palace on October 31, 1890.

MARIA CHRISTINA.

ANTONIO MARÍA FABIÉ,
Colonial Secretary.

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LAW OF PORTS FOR THE ISLAND OF CUBA.

CHAPTER I.

OWNERSHIP OF COAST WATERS, OF THE SHORES OF THE SEA, ACCRETIONS AND EASEMENTS OF ADJOINING LANDS.

ARTICLE 1. The following are national property and for public use, without prejudice to the rights of individuals:

First. The littoral zone, which is that portion of the coast or sea limits of the Spanish territory which lies between ebb and flow, where tides are perceptible, or which is covered by the highest surfs during storms, where they are not.

Said littoral zone extends also along the banks of rivers as far as they are navigable or tides are perceptible.

Second. The coast waters or maritime zone which girt the coasts of Spanish domain, throughout the width determined by international law, with their coves, roadsteads, bays, harbors and other havens available for fishing and navigation Within said zone the State is in charge of the surveillance and utilities, as also of the right of asylum and immunity, in accordance to law and international treaties.

ART. 2. The lands that are added to the littoral zone through accretions and deposits caused by the sea are of public ownership. When by reason of said accretions and owing to the withdrawal of the sea the interior line limiting the said zone advances toward the former, the surplus lands remaining from the former littoral zone shall become the property of the State, after the proper survey thereof by the department of the colonies, with the approval of that of the navy; and the former may alienate them when they are not considered necessary for maritime or other services of public utility. Should they be alienated in accordance to law, the right of refusal shall be granted to the owners of the adjoining lands.

ART. 3. Islands already formed, or which may be formed, within the littoral zone and in estuaries and mouths of rivers that are considered maritime harbors, under this law, are the property of the State. But if such islands should be created by the cutting of a river through lands of private ownership they shall continue to belong to the owner of the dismembered estate or estates, reserving the rights which private individuals may have.

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ART. 4. Anchorages, ship-yards, docks, arsenals, and other establishments intended by the Government for the exclusive use of the navy, are the property of the State. First and second class harbors of general interest are national property and for public use.

ART. 5. Everything cast upon the shore by the sea and which has no known owner belongs to the State. The treasury department, after the proper inventory and appraisal, shall seize it, and shall be liable for the claims of a third person and for the payment of charges and rewards for the finding and salvage thereof, in accordance with the prescriptions of laws and regulations.

ART. 6. The Government, without prejudice to the obligations and rights of the owners and consignees, shall provide for the salvage of wrecked vessels, their cargoes and effects, and also for their recovery from the wreck in case of a total loss, in accordance with the provisions of maritime ordinances and regulations.

Consular agents shall exercise the proper intervention according to international agreements with regard to the nations they represent.

ART. 7. Private lands adjoining the sea or lying within the littoral zone are subject to the easements of salvage and coast surveillance.

ART. 8. The salvage easement has the same extension on private lands adjoining the sea as on the littoral zone within which they are situated and 20 meters in addition thereto toward the interior of the lands; and public use shall be made thereof for the purpose of saving and depositing the flotsam, effects, and cargoes of wrecked vessels.

Fishing vessels may also beach within this zone of easement when compelled to do so on account of the condition of the sea, and in the same manner deposit their effects on land while the storm rages.

This zone of easement shall advance or recede with the advance or recession of the sea, as established in general for the littoral zone.

For damages caused to property on the occasion of a salvage an indemnity shall be proper, but only to the extent of the value of the objects saved, after the expenses of assistance given and rewards to finders have been paid according to law.

ART. 9. The salvage easement is not an obstacle to owners of lands adjoining the sea from sowing and planting on their premises within the littoral zone and constructing agricultural buildings and country resorts thereon.

In order to build in such places, notice must first be given to the governor of the province, who, after hearing the naval commander and the chief engineer of public works, may withhold his consent should it cause any obstruction to the exercise of the easement referred to in the foregoing article.

ART 10. The coast surveillance easement consists of the obligation to leave free a general passage 6 meters wide adjoining the highest water line or that reached by the surf during the heaviest storms

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where tides are not perceptible, to be established when necessary by the governor-general of the island after hearing the naval authorities. In places where it is difficult or dangerous to pass, the passage may be carried more than 6 meters inland, but without exceeding what, in the opinion of said authority, is strictly necessary.

The surveillance easement, in extraordinary cases and when necessary for the service of the State, is imposed alike on lands that are fenced in, as on those that are open. Property which has not been subject to the surveillance easement until the promulgation of the water law of August 3, 1886, and subsequently thereto has suffered visible and material damages through the imposition of said easement, shall be paid the proper indemnity for said damage.

Chapter II.

USE AND UTILIZATION OF THE COAST WATERS AND BEACHES.

Art. 11. Only the owners of ponds, lakes, or basins of sea water in private property, having no navigable communication with the sea, have a right to fish therein without any restrictions but those relating to public health.

Art. 12. The free use of the coast waters, coves, roadsteads, bays, and havens is understood for the purposes of navigation, fishing, shipping and landing, anchoring, and other similar acts, within the legal prescriptions and police regulations relating thereto. The same is the case with regard to the public use of beaches, which under similar restrictions is granted to everybody for traveling, bathing, spreading and drying clothes, casting nets, beaching, careening and building ships, bathing cattle, picking shells, plants, and shellfish.

Chapter III.

CLASSIFICATION OF PORTS.

Art. 13. For the purposes of this law ports are those places on the coast more or less protected, either by reason of the natural lay of the land or by expressly constructed works, and wherein maritime traffic is carried on in a permanent and legal manner.

Art. 14. Estuaries and mouths of rivers are likewise considered as ports up to where the tides are perceptible, and where there are none, up to where the surf reaches during ordinary storms, altering their usual flow. Above these points the banks or margins of rivers preserve their special fluvial character.

Art. 15. Ports are classified as first and second class ports of general interest, and ports of local or provincial and municipal interest.

Ports of general interest are considered those specially destined to anchoring grounds, mercantile depots, loading and unloading of vessels

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employed in maritime trade, when such trade may be of interest to several provinces, and when said ports are in direct communication with the principal centers of production of the island of the Peninsula, and of foreign countries. Ports of refuge, so called owing to their position and special advantages of capacity, security, and shelter during storms, are also of general interest.

Ports of local interest, or provincial and municipal ports, are those principally destined for anchoring grounds, loading and unloading of vessels employed in local industry and commerce, without prejudice to being classified among those of general interest when their trade may extend to other localities, territories, or provinces.

The foregoing classification can not be altered except by virtue of a law.

ART. 16. Ports of the island which are qualified for foreign trade or commerce on the high seas are declared first-class ports of general interest.

Ports not so qualified, at which coasting vessels engaged between two or more provinces make a stop, are declared second-class ports of general interest.

ART. 17. All ports not included in the preceding article, and in which commercial trade is carried on, are declared ports of local interest.

CHAPTER IV.

EXECUTION AND MAINTENANCE OF WORKS IN PORTS, THEIR MANAGEMENT AND POLICE.

ART. 18. It shall be the duty of the colonial secretary to order the survey and preparation of plans for all kinds of works in ports of general interest; to approve the same and order their execution after hearing the department of the navy; to grant concessions, make service regulations, designate the necessary personnel, and prescribe the duties of officials depending on the department of the colonies who are to direct and supervise the works.

ART. 19. In harbor works in ports of provincial interest the same duties devolve upon the provincial deputation as are assigned to the department of the colonies in the preceding article, except where the works should affect lands of public ownership, in which case the provisions of Chapter VIII of the general law of public works must be observed. Similar duties appertain to municipal councils with regard to municipal harbors.

The plans for works in ports corresponding to the provincial deputation or municipal councils shall, after the proper naval authorities have passed thereon, be submitted for the approval of the colonial department, which is also intrusted with the technical direction of the works and the appointment of the personnel required thereon.

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ART. 20. The same duties appertain to the navy department, with regard to the surveys, plans, and execution of works in ports having military arsenals, in so far as they relate to the latter ports.

ART. 21. The establishment, repair, maintenance, and cleaning of ports, and management, service, and police thereof, in all civil matters appertain, in ports of general interest, to the colonial department, and in ports of local interest, to the deputations or municipal councils, according as to whether they are of a provincial or municipal character.

ART. 22. The port service is divided into two classes, one relating to the general shipping traffic, arrivals, departures, anchorages, berths, moorings and unmoorings at wharves; towing and maritime assistance appertain to the naval authority; and the other, including the execution and maintenance of the works and buildings, operations of loading and unloading on wharves, traffic on the same and within its zone of service, and all that relates to the use of the various works, intended for the trade of the port, which appertain to the colonial department.

ART. 23. The governor-general of the island, as the superior chief of all the branches of the civil administration and as delegate of the colonial department, is the chief of all such services at the ports as are in charge of said colonial department.

ART. 24. Subject to the general service regulations and to the orders and instructions of the colonial department, and under the authority of the governor-general of the island, the engineers of roads, canals, and ports shall have charge of the survey and direction of all the works and supervision of the services comprised in the second class mentioned in article 22, excepting such works and services as pertain to the military arsenals.

ART. 25. Port of general interest shall be maintained by the State, according to the sums appropriated therefor in the general budgets and those included in their respective budgets by the deputations and municipal councils when these corporations wish to contribute toward the expenses of said ports. The works shall be executed either by officials of the administration or by contract, as may be determined in each case.

ART. 26. The Government may provide for the cost of harbor works by means of special taxes levied in the locality, to be exclusively applied to said works, independently of the general State budget, and organize boards of harbor works intrusted with the administration and disbursement of funds and the execution of the works, under the supervision and surveillance of the colonial department.

ART. 27. The colonial department shall issue general regulations for the organization and management of existing boards of harbor works and for such as may hereafter be established. The appointment and removal of the chief engineer of said works shall be subject to the will of the Government, which may also appoint special delegates on the said boards whenever it may consider it advisable.

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ART. 28. Works in ports of general interest, including such as have been planned or begun for the account of the State, may also be executed by means of concessions to private companies, in accordance with the general law of public works.

ART. 29. Ports of local interest shall be maintained with funds of the deputations or municipal councils, according as to whether the works are provincial or municipal. Toward the execution of works in ports pertaining to deputations, the State and municipal councils may contribute, either by furnishing skilled officials or by making appropriations for the purpose in their respective budgets. In like manner the State and provincial deputations may contribute toward harbor works which may be instituted by municipalities.

The surveys and plans and their approval as well as the concessions of provincial and municipal harbor works shall be made in accordance with the provisions of articles 39 and 48 of the general law of public works.

ART. 30. The proper instructions for the formation and approval of plans of new works in harbors, stating the formalities and reports which must precede said approval, shall be included in the regulations for the execution of said law.

ART. 31. At every port there shall be a littoral zone of service, to be fixed by the colonial department, in each case, for the operation of loading and unloading, warehousing and transportation of goods, and the transit of persons and vehicles. The approval and project of said zone, and the apportionment thereof for the different services, carry with them the declaration of public utility, and such private lands or buildings as lie within it are subject to the exercise of the right of eminent domain.

ART. 32. The governor of the province, after hearing the captain of the port, the chief engineer, the provincial board of health, and the collector of customs, shall mark out and assign the zones of the port to the different services on the wharves, and shall decide all questions that may arise with regard to their use and police, when the port in question is of local interest; if it be of general interest, the governor-general of the island shall have these duties. From the decisions an appeal lies to the governor-general or to the secretary of the colonies, as the case may be.

ART. 33. Whenever a vessel is wrecked within a port her owners, or the consignees of the insurance companies shall proceed to raise her within the term fixed by the naval commander of the province. Should they not do so, the secretary of the navy shall order it done, deducting the cost from the proceeds of the vessel and goods which it may contain.

ART. 34. If, either willfully or through carelessness, any damage should be caused by vessels or their mooring cables to the works of any port, or the latter should thereby be fouled, the captain of the

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port shall cause the parties responsible therefor to pay, in addition to the fines in stamped paper established by the regulations, the sum at which the engineer may estimate the necessary repairs, the latter amount to be paid into the Treasury.

ART. 35. Besides the general regulations for the execution of this law, special-service and police by-laws shall be framed for each port, containing the provisions relating to its use, and which must be approved by the colonial department, procuring the greatest uniformity in these regulations, in so far as possible, through the different conditions of each port for the benefit of commerce and maritime industry.

CHAPTER V.

SERVICES CONNECTED WITH PORTS.

ART. 36. The pilot service in ports of the Spanish domain shall continue to be in charge of the navy department.

ART. 37. Lights and beacons, being services connected with that of the ports, shall continue to be in charge of the colonial department. The maritime watch stations and semaphores and lifeboats shall be in charge of the same, but shall depend immediately on the superior naval authority of the island.

CHAPTER VI.

WORKS EXECUTED BY PRIVATE PERSONS.

ART. 38. At no points on the coasts, beaches, ports, and mouths of rivers, or on the islands formed within the littoral zone, can new works of any kind be executed, or buildings constructed without the proper authorization, in accordance with the provisions of this law.

ART. 39. Permission to build temporary barracks or constructions designed for baths shall be granted by the governors, in maritime capitals, and in other towns, by the mayors, after consulting the naval authority, if said constructions are to be built outside the port; but if within the same the chief engineer shall also be heard, in addition to the naval authority.

ART. 40. Permission to establish other services or improvements of a temporary character within the littoral zone, which is national property and for public use, shall be granted by the naval commanders of the provinces, provided they do not interfere with the common uses to which said zone is devoted, and after hearing the governors and chief engineers of public works, where such concessions might affect other services under the control of the colonial office or some other branch of the administration.

ART. 41. Such permissions shall be revoked whenever necessary for a proper surveillance and service of the coasts, the town and rural

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police, or the concession of the land for other purposes of greater utility and importance, after instituting an inquiry and hearing the person interested before the authority who may have granted the permission.

In such cases the owners of the temporary constructions shall dispose only of the materials employed without any right to indemnity.

ART. 42. When the constructions and improvements referred to in the foregoing articles are of a permanent character, the authorization shall be granted by the secretary of the colonies, after hearing the secretary of the navy.

ART. 43. Works for coast defense to protect private estates or buildings against the beating of the waves, even though of a permanent character, shall be authorized by the governor of the province, after hearing the opinion of the naval authorities and of the chief engineer of public works.

ART. 44. It is the duty of the colonial secretary to grant authorization, after hearing the naval authorities, for the construction on the sea or beaches and adjoining lands, or in ports, whether for private or public use, of such wharves, quays, dockyards, floating docks, shipyards, and other similar works as are complementary and auxiliary to those existing for the service of the port. Such authorization shall not constitute a monopoly, and therefore others may be granted for the same class of works in the same harbor, beach, or stretch of coast, provided the public service or use does not suffer thereby.

ART. 45. It is the duty of the colonial secretary, after hearing the naval authorities, to grant authorization for the establishment of salt ponds, works, and other buildings which may wholly or in part occupy public lands for private use.

ART. 46. It is the duty of the secretary of the navy to grant concessions for all sorts of fisheries, fish garths, crawls, shellfish nurseries, in accordance with the ordinances and regulations in force thereon or that may hereafter be established.

ART. 47. The colonial department may authorize private individuals or companies, under the terms prescribed in the general law of public works, to construct ports at places on the coast where there are no works or plans of other ports that are classified, or where no special rights exist for the use and utilization of said place, after hearing the navy department.

ART. 48. When the works of a port the concession of which is applied for, whether in conformity with the plan of the applicant, or subject to the one surveyed and approved by the colonial department, refers to one in which, although no work has yet been executed, there exists a legally authorized maritime commerce, and services are performed with more or less perfection, the concession must be granted under such conditions as may be necessary to reserve in full force the

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existing rights of entering the port, anchoring, loading, and unloading, afloat or on the coast, so that none of the services that are freely exercised or enjoyed by the public may be made compulsory.

ART. 49. Proper authorization may also be granted to a private company for executing the works of a port in charge of the State or for completing those which are constructed or suspended, or carrying out one part of the plan while the State executes the other, in which case special conditions may be established in compensation of the expenses thereof and for the benefit of the company in the shape of the cession of the land where the works are carried on, for a limited time, or other privileges, according to the available portion of the work, the cost of those that may be executed and the nature or importance of the public services existing in the port, provided prior rights to the use of the port and its works are reserved in full force, as stated in the preceding article.

ART. 50. In case works declared of public utility are to be executed in a port by the State, the deputations, or municipal councils, and in order to carry them out it should become necessary to utilize or destroy those constructed by private persons by virtue of concessions granted them, the concessionaries shall have a right to be indemnified only for the value of the material employed in said works, after an appraisement by experts made in conformity with the general regulations for the execution of this law.

ART. 51. The colonial department shall grant authorization for draining, cultivating, or otherwise improving salt marshes belonging to the State, or of public ownership, and such as do not belong to town commons or other property devoted to general use.

In order to request of the colonial department a declaration of lands pertaining to town commons, or devoted to general use, a period of one year is allowed from the date of the publication of this law. If the towns fail to obtain a favorable decision or the term expires without an application having been made for such declaration, said salt marshes shall be considered as waste lands; this, however, not to interfere in any case with the free public use of their natural products.

Salt marshes of private ownership may be drained by their owners with the consent of the governor, who shall give it after hearing the naval authority and the chief engineer of the province, provided navigation and fishing are not injured thereby.

For the draining and improvement of salt marshes that may be declared unhealthy, the provisions contained in the water law regarding marsh lands shall be observed.

ART. 52. The concessions referred to in the foregoing articles shall be subject to the formalities mentioned in the general regulations for the execution of this law.

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ART. 53. Authorization for the survey or for drawing the plans of the works included in articles 44 and 45, and those mentioned in articles 47 and 51, shall be granted by the Governor-General of the island after receiving the report of the general inspector of public works of the same.

Those comprised in article 46 shall be granted by the naval commander of the maritime province to which they belong.

ART. 54. The concessions of works and public lands mentioned in articles 44, 45, 47, and 48 shall be granted by the colonial department without any public bid or limited term, subject to the provisions of article 50. Should there be more than one application for the same or similar work, or the plans presented prove incompatible owing to their occupying a portion of public property used in common on the beaches, shores, or ports, where they may be established, those plans shall be preferred which offer the greatest advantages, and if they be equal, the one first presented.

ART. 55. Concessions of salt marshes shall be granted without public bids and in perpetuity, except in case some private party or company should demand an award by bids, presenting to that effect a proposition in which a standard of valuation is fixed and offered, guaranteed by a temporary deposit equal to said standard, which shall serve as a basis for the bid. If the person obtaining the award should not be the author of the plan approved for the drainage works, he shall have to pay the cost of said plan to the author, appraised in accordance with the provisions governing such cases in bids for public works, or in the manner prescribed by the regulations.

ART. 56. Concessions of works in the cases referred to in article 49 shall be granted through bids and for a limited period. The bids shall be made upon any one of these three bases, namely:

The appraisal of the existing works and of the constructions and lands to be utilized; the reduction of the tariff rates charged for the use of the works; the period of time during which the company is to enjoy the benefits of the works.

The colonial department shall fix the basis, standard, and conditions for the bid, taking into consideration the plans and proposals that may have been presented requesting the concession.

ART. 57. In concessions of works in ports, whereby lands are reclaimed from the sea, there shall always be excepted, out of the lands recognized as the property of the concessioner, that portion which may be necessary for the service zone referred to in article 31, which shall remain the property of the State.

ART. 58. In every concession of public or private works there shall be fixed:

First. The period for which the concession is granted.

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Second. The terms within which the works are to be begun and concluded.

Third. The proportional part of the estimate which has to be spent in each of the periods that it may be thought advisable to fix in order to carry out the concession within the full term allowed for the termination of the works.

Fourth. The conditions for the establishment and use of the work as may be necessary in order not to injure acquired rights and general interests.

Fifth. The bond required of the concessioner in the case of a public work, to guarantee the execution thereof; and,

Sixth. The case where the concession may be declared forfeited, as well as the consequences thereof.

ART. 59. When a declaration of public utility is requested by private persons in behalf of any work, the procedure prescribed by the general law of public works for said declaration shall be observed.

ART. 60. He who shall have enjoyed during twenty years the usufruct of some maritime industry established on public property without opposition on the part of the authority or of a third party, shall continue to enjoy the same, even though he fail to show that he had obtained proper authority therefor; this right shall be understood as in force so long as the class of industry or the application of the space occupied have undergone no changes or alterations during the aforesaid twenty years; and otherwise it shall be declared forfeited unless authorization be obtained as in the case of a new work, and in the manner prescribed in this law.

ART. 61. All laws, royal decrees, regulations, royal orders, and other provisions conflicting with this law are hereby repealed.

ART. 62. The governor-general of the island may anticipate the concessions of the works included in this chapter, and which, according to the provisions thereof, it is the duty of the colonial department to grant, without prejudice to, and reserving the definite decision which may be proper if the persons interested accept this condition, and provided there is no opposition or objection on the part of the corporations or officials interested, being obliged otherwise to forward to the colonial department the respective proceedings with their report for a final decision.

Approved by Royal Decree of this date.

FABIÉ.

Madrid, October 31, 1890.
(*Gaceta* of December 13.)

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